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ABSTRACT

Search and seizure in the public schools has long been a problem for both school authorities and law-enforcement officers. Students have also been known to have been deprived of their constitutional rights. Much of the problem stems from a lack of clarity in the application of the Fourth Amendment to the school setting. This monograph was written to provide a clear understanding of the standards presented by the Supreme Court in "New Jersey v. T.L.O." as well as answers to the issues left unresolved by the decision. The monograph also suggests some practical ways of applying search-and-seizure law to situations in the school setting. Following the introduction, section 2 describes issues related to students' rights and the Fourth Amendment. Section 3 lays out the reasonableness standard proposed by the Supreme Court: the higher probable cause standard that police follow is unsuited to the school environment. A model for the application of search-and-seizure law called TIPS is introduced, which consists of the variables to be considered by practitioners before engaging in a search. TIPS is an acronym for "thing/information/place or person/search methods." Other considerations, such as penalties, police involvement, and common errors, are discussed in the fourth section. The final section applies the reasonableness standard to searches for drugs and drug-use testing. Four figures and a table of cases are included. (LMI)

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SEARCH AND SEIZURE IN THE PUBLIC SCHOOLS

SECOND EDITION

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and Adjunct Professor of Law
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— and —

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I. Introduction

Search and seizure in the public schools has long been a problem for both school authorities and law enforcement officers. In addition, students have been known to have been deprived of their constitutional rights as a result of a school search. Much of the problem stems from lack of clarity in the application of the Fourth Amendment to the school setting. The myriad of lower court holdings makes certainty of the law difficult. Judicial interpretations are often locally contradictory. This state of affairs has confused both school authorities and law enforcement officials. Practices and procedures that were proper yesterday may be wrong today.

Many had hoped that when *New Jersey v. T.L.O.* reached the Supreme Court confusion would come to rest. While *T.L.O.* did provide a new standard for use in public school search and seizure, the case left many questions unanswered. By his own admission, Justice White, author of the *T.L.O.* majority opinion, provided a list of issues not addressed: (1) Does the *exclusionary rule* apply to the fruits of an unlawful search in the public school?[1] In other words, will a court throw out the case because the school official did not follow proper procedure in obtaining evidence. (2) Do students have privacy rights in connection with their *lockers, desks or other storage areas* the school provides? If so, what are the standards for searching these areas?[2] (3) Do the standards change if the police are involved?[3] Does it matter that the police made the request to search as opposed to the school requesting the assistance of the police? (4) Is it necessary to have *individualized suspicion* before a search takes place?[4] In other words, must school authorities know exactly which students are suspected of carrying contraband? If this is a requirement, will it have implications for searching groups of students?

In addition to the unanswered questions recognized by the Court, there are a number of other issues left unresolved by *T.L.O.*: (1) What is the status of *sniff dogs* and their use in school searches? (2) What about searching students' *vehicles?* Are there different procedures depending on whether the car is occupied? (3) To what extent are school officials *liable* for searches that are found to be illegal?

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[1] New Jersey v. T.L.O., 469 U.S. 325, 333 n.7 (1985).
[2] *Id.* at 337 n.5.
[3] *Id.* at 341 n.7.
[4] *Id.* at 342 n.8.

The primary purpose of this monograph is twofold: first, to provide a clear understanding of the standards presented by the Supreme Court in *T.L.O.* as well as answers to the great number of issues left unresolved; and second, to suggest some practical ways of applying search and seizure law to situations in the school setting. A model for the application of search and seizure law called TIPS will be introduced. This model consists of the variables which the practitioner should consider before engaging in a search.

II. Students' Rights and the Fourth Amendment

A. Source of Search and Seizure Law

The Fourth Amendment to the Constitution of the United States is the source of search and seizure law. The amendment states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.[1]

Originally the Fourth Amendment was thought only to protect citizens from the federal government. However, in 1961 the Supreme Court held that the protection of the amendment extends to state action through the Fourteenth Amendment.[2] The amendment exists to protect citizens against "unreasonable searches" by the government. Therefore a search itself may be legal as long as it is reasonable. Determining what is "reasonable" has been the main problem for the courts in the search and seizure arena.

While a citizen is protected against unreasonable searches, gov-

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[1] U.S. Const. amend. IV.

[2] *Mapp v. Ohio*, 367 U.S. 643 (1961). The Supreme Court held the Amendment itself applicable to the states in *Wolf v. Colorado*, 338 U.S. 25 (1949), but in that case the Court held that the exclusionary rule was not applicable to the states because the rule did not derive from the explicit requirements of the Fourth Amendment. This portion was explicitly overruled in *Mapp*.

ernment has a need to enforce the law. The need for government to obtain information may outweigh individuals' needs to keep their privacy. The right of privacy is not absolute, it is relative. The degree of protection may depend on the purpose of the search, the person doing the searching, the place being searched, the background or type of person being searched, the severity of the penalties resulting from the search, and the extent to which the persons' privacy was invaded by the searcher.

Courts have balanced these variables in the process of determining whether "probable cause" exists. Finding probable cause, magistrates will issue a warrant. This process represents the preferred approach to searching since the Supreme Court has ruled that warrantless searches are per se violative of the Fourth Amendment.[*] However, there are exceptions to the warrant requirement. An exception will be made if the following conditions exist: (1) There is consent by the person to be searched; (2) an emergency situation exists where taking time to get a search warrant would eliminate the chances of obtaining evidence; (3) a valid arrest has been made and the search is part of the arrest; and (4) the search or seizure is necessary for the safety of the searcher. These exceptions to the warrant requirement still require probable cause.

The foregoing represents the basis of search and seizure law generally. This law cannot be directly applied in the school setting. A wide range of different approaches are used when dealing with children in school.

B. Privacy Rights of Students and New Jersey v. T.L.O.

Until recently, the courts were split on the question of whether the Fourth Amendment applied at all to students. Those who thought it did not apply advanced two theories. One theory was that school authorities are "private persons." Since the Fourth Amendment protects only against action by government, the restrictions do not extend to school officials. The second theory involved the notion of in loco parentis. Literally translated from the Latin, "in place of parents," the doctrine states:

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[*] *See* J. Lyn Goering, Comment, *Constitutional Law - Privacy Penumbra Encompasses Students in School Searches* [New Jersey v. T.L.O., 105 S. Ct. 733 (1985)], 25 WASHBURN L.J. 135 (1985) (providing an excellent background concerning the Fourth Amendment).

[*] Martin Schiff, *The Emergence of Student Rights to Privacy under the Fourth Amendment*, 34 BAYLOR L. REV. 209 (1985).

> The parent may also delegate part of his parental authority, during his life, to the tutor or the schoolmaster of his child; who is then in loco parentis, and has such a portion of power of the parent committed to his charge, *viz* that of restraint and correction, as may be necessary to answer the purposes for which he is employed."[7]

The Fourth Amendment and its probable cause requirement could be set aside if school authorities were thought to be acting "in the place of parents" and not as government officials. The position that students have no privacy rights was rejected by *New Jersey v. T.L.O.*

1. The Case of T.L.O.

The case of *T.L.O.* (the letters T.L.O. were used by the court to keep the student anonymous) involved a fourteen-year-old female Piscataway (New Jersey) High School student. On March 7, 1980, she was caught smoking in the lavatory by a teacher. T.L.O. was with a companion student who was also apprehended. Since school rules prohibited smoking in the restroom, the teacher took both girls to the office. The girls were questioned by the assistant principal. T.L.O.'s companion admitted to the infraction but T.L.O. denied she had been smoking.

The assistant principal demanded to see T.L.O.'s purse and found a package of cigarettes in plain view. Other suspicious material was uncovered by removing the cigarettes. He noticed cigarette rolling papers which he assumed meant marijuana was involved. Searching further, he found marijuana, forty one-dollar bills, and a pipe typically used for smoking hash. In a separate zippered compartment of the purse he found an index card with a written heading, "People who owe me money." The card contained a list of names with dollar amounts next to each name. Also in the separate compartment were two letters that discussed marijuana business. The assistant principal telephoned T.L.O.'s mother who drove her to the police station.[8]

T.L.O. admitted that she sold marijuana to other students. She was then suspended for three days for smoking cigarettes in a non-smoking area and seven days for possession of marijuana. Also, she was charged by the police with delinquency based on the physical evidence submitted by the assistant principal and on her confession. At

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[7] 12 WILLIAM BLACKSTONE, COMMENTARIES, Book I, ch. 16 at 453.
[8] 469 U.S. at 328-29.

the delinquency hearing. T.L.O. contended that the search of the purse violated her Fourth Amendment privacy rights and, therefore, the evidence and her confession should be excluded. However, the juvenile court found T.L.O. delinquent. On appeal, the New Jersey Supreme Court reversed, holding that the evidence had been obtained in violation of T.L.O.'s constitutional rights. New Jersey appealed the decision to the Supreme Court. New Jersey asked the Court to decide the single issue of whether the exclusionary rule applies to evidence obtained by school officials in violation of the Fourth Amendment. In other words, should a juvenile court throw out evidence seized by school authorities because it finds there was no probable cause — a standard which the police must follow. After hearing arguments, the Court decided not to rule on the issue. Instead it ordered reargument on whether the Fourth Amendment applies to the school setting. If it does, to what degree and by what standards does it apply?

2. Do Students Have a Right to Privacy?

The Supreme Court in *T.L.O.* took its position on student privacy rights as they fashioned answers to the questions posed. New Jersey had argued that the Fourth Amendment did not apply because of the in loco parentis doctrine. Writing for the majority, Justice White rejected the argument and maintained that school authorities are state officials, not stand-ins for parents:

> If school authorities are state actors for purposes of the constitutional guarantees of freedom of expression and due process, it is difficult to understand why they should be deemed to be exercising parental rather than public authority when conducting searches of their students ... In carrying out searches and other disciplinary functions ... school officials act as representatives of the [s]tate, not merely as surrogates for the parents, and they cannot claim the parents' immunity from the strictures of the Fourth Amendment.[11]

Therefore, the Fourth Amendment does indeed apply to the school setting. Its application extends to school authorities as a limitation on their search activities and to students as a protection from

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[11] *Id.* at 336-37

unreasonable searches. Since the Fourth Amendment applies, the Court went on to point to some of the privacy rights of students under the Constitution.

New Jersey had maintained that students have no privacy rights at all because of the special relationship between students and school authorities. It was argued that because of the high level of supervision schools must maintain over students, there is "virtually no legitimate expectation of privacy in articles of personal property 'unnecessarily' carried into a school."[12] The New Jersey argument was founded on two premises: (1) A student having an expectation of privacy is incompatible with the school's trying to maintain a sound educational environment. (2) A student has little need to bring items of personal property into the school.

Once again the Court rejected the New Jersey argument stating, "Both premises are severely flawed."[13] Although Justice White sympathized with the job the schools do in maintaining order, that duty is not so great as to cancel out students' privacy rights. As to students having no need to bring personal property to school, Justice White criticized New Jersey for not being realistic. He wrote:

> Nor does the State's suggestion that children have no legitimate need to bring personal property into the schools seem well anchored in reality. Students at a minimum must bring to school not only the supplies needed for their studies, but also keys, money, and the necessaries of personal hygiene and grooming. In addition, students may carry on their persons or in purses or wallets such nondisruptive yet highly personal items as photographs, letters, and diaries. Finally, students may have perfectly legitimate reasons to carry with them articles of property needed in connection with extracurricular or recreational activities. In short, school children may find it necessary to carry with them a variety of legitimate, noncontraband items, and there is no reason to conclude that they have necessarily waived all rights to privacy in such items merely by bringing them onto school grounds.[14]

Therefore, students do have privacy rights for certain items they bring to school. However, the expectation of privacy is not limitless. Justice White stated that the Fourth Amendment does not provide

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[12] *Id.* at 338.
[13] *Id.*
[14] *Id.* at 339.

privacy for contraband: "Of course the Fourth Amendment does not protect subjective expectations of privacy that are unreasonable or otherwise 'illegitimate.' To receive the protection of the Fourth Amendment, an expectation of privacy must be one that society is 'prepared to recognize as legitimate.'"[15]

Justice White returned to the discipline issue, perhaps to make sure that sufficient deference was paid to school authorities' difficult task in maintaining order. The proper perspective is to recognize that a student has *some* privacy rights but not to the extent where schools are hampered in maintaining an orderly environment:

> Against the child's interest in privacy must be set the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds. Maintaining order in the classroom has never been easy, but in recent years, school disorder has often taken particularly ugly forms: drug use and violent crime in the schools have become major social problems. Even in schools that have been spared the most severe disciplinary problems, the preservation of order and a proper educational environment requires close supervision of school children, as well as the enforcement of rules against conduct that would be permissible if undertaken by an adult. "Events calling for discipline are frequent occurrences and sometimes require immediate effective action." Accordingly, we have recognized that maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures, and we have respected the value of preserving the informality of the student-teacher relationship.[16]

For the remainder of the case, the task of the Court was to determine how to strike a balance between the interests of the school in maintaining order and the student in retaining some privacy rights.

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[15] *Id.* at 338.

[16] *Id.* at 339-40 (citation omitted).

III. The Reasonableness Standard

In attempting to strike a balance between the competing interests of school and student, the Supreme Court in *T.L.O.* proposed the *reasonableness standard.* It said that the higher probable cause standard which police must follow is unsuited to the school environment. School officials do not need to obtain a warrant before searching a student. The Court felt that requiring a search warrant and/or probable cause would "interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools."[17] The better rule, the Court held, is that "the legality of a search of a student should depend simply on the *reasonableness, under all the circumstances of the search.*"[18] In using the reasonableness standard, a two-part analytical device was offered: First, was the search justified at its inception — in other words, did the searcher have *reasonable suspicion?* Second, was the search *reasonable in scope* — in other words, was the search more intrusive than it had to be? Further, was the type of search related to the object to be found? Elaboration on the use of these two analytical prongs is needed. A good beginning might be to see how the Supreme Court applied the reasonableness standard to the facts in *T.L.O.*

It should be noted that the reasonableness standard applies to school searches regardless of the age of the student. In one case a student challenged a search because the school did not have probable cause before the search. He argued that probable cause applied in his case because he was going to be prosecuted as an adult by the police. The argument was that *T.L.O.* was prosecuted as a juvenile, thus the reasonableness standard can only apply to searching juveniles. The court held that "the Supreme Court's holdings in T.L.O. apply to school searches of students, regardless of whether the students are later prosecuted, either as adults or juveniles."[19]

A. Applying the Reasonableness Standard in T.L.O.

In applying the two-pronged reasonableness standard, the Court had no difficulty in upholding the search of T.L.O. The Court viewed the assistant principal as actually having conducted two searches: one for the cigarettes and one for the marijuana and related evidence. In the first search, the assistant principal had *reasonable suspicion* to enter

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[17] *Id.* at 340.
[18] *Id.* at 341 (emphasis added).
[19] Irby v. State, 751 S.W.2d 670, 673 (1988).

T.L.O.'s purse. She had been caught "red handed" by a certified teacher. T.L.O. argued that mere possession of cigarettes was not an infraction and therefore the assistant principal had no reason to go into T.L.O.'s purse since he could not have known that cigarettes were there. The Court responded by giving a lesson on the rules of evidence:

> But it is universally recognized that evidence, to be relevant to an inquiry, need not conclusively prove the ultimate fact in issue, but only to have "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."[20]

Therefore, the assistant principal might have been able to corroborate the teacher's report of unauthorized smoking by entering the purse. The kind of "hair-splitting" approach that New Jersey argued should have been used has no place in the school setting. Rather, the Court supported the position that school officials should simply use their good judgment in approaching the reasonable suspicion standard. Justice White wrote: "It was the sort of 'common sense conclusion[s] about human behavior' upon which 'practical people' — including government officials — are entitled to rely."[21] The question of reasonable scope did not enter consideration until the second search.

The second search was also found to be reasonable (at its inception and in its scope). In picking up the pack of cigarettes, rolling papers were exposed. In the administrator's experience, the presence of rolling papers meant marijuana could be involved. After discovering the marijuana and a quantity of cash, he was encouraged that further searching would be necessary to provide supporting evidence that T.L.O. was a drug trafficker. When he entered the zippered compartment of the purse, the Court concluded this was a reasonable extension of his previous discoveries. When the assistant principal found a list of names and two letters, the evidence was substantial enough to justify examination of the private correspondence. Therefore, the assistant principal had reasonable suspicion for the second search.

Although T.L.O. argued that the seizing and reading of her private letters exceeded *reasonable scope*, the Court rejected her position by pointing to the overall reasonableness with which the assistant principal conducted the searches. The Court did not feel that reading the letters was too intrusive given all of the preceding evidence.

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[20] *Id.* at 345 (quoting FED. R. EVID. 401).
[21] *Id.* at 346 (quoting United States v. Cortez, 449 U.S. 411, 418 (1981)).

In sum, the search of T.L.O. met the reasonableness standard. First, reasonable suspicion was met because there was reasonable grounds for suspecting that searching T.L.O.'s purse would turn up evidence to corroborate a teacher's report of wrongdoing. Second, the search was reasonable in scope since the measures adopted (going through the purse) were directly related to turning up evidence in support of T.L.O.'s suspected infraction.

B. Elaborating on the Two-pronged Test — the TIPS Formula

While the *T.L.O.* case gave credence to the reasonableness standard, the facts of the case do not encompass all the search and seizure circumstances that occur in public schools. Once more, considerable case law provided by the lower courts was left in place by the Court. *T.L.O.*'s major contribution was to provide an analytical framework for deciding search and seizure issues in the public school.[22] In using the Court's framework, it is necessary to keep a number of variables in mind when assessing whether a search is reasonable. In order to recall those variables, the reader can he aided by the following formula:

Figure 1

TIPS Formula

Reasonable Search = TIPS

that is

REASONABLE SEARCH = [The Thing after which the searcher is seeking] x [The sufficiency of the Information or Informant which lead the searcher to believe a search was necessary] x [The Place or Person of the search i.e., locker, car or person] x [The measures used in the actual Search]

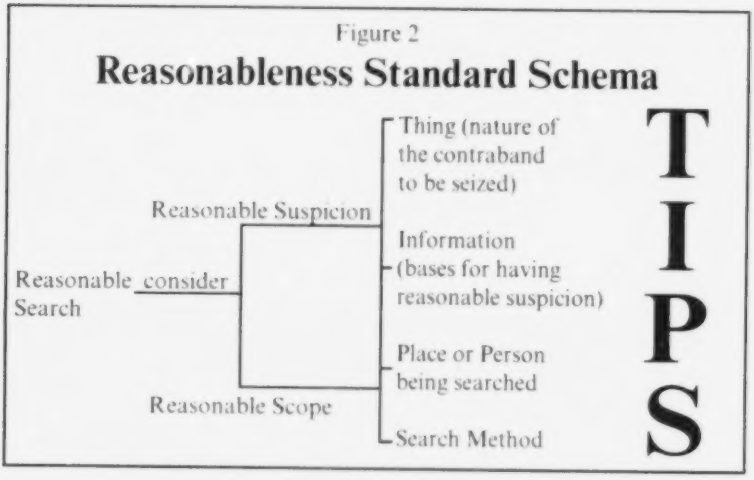
T I P S

[22] *See* Joseph R. McKinney, *The Fourth Amendment and the Public Schools: Reasonable Suspicion in the 1990s*, 91 EDUC. L. REP. 455 (1994) (providing an overview of post-*T.L.O.* decisions and use of the reasonable suspicion standard).

The first two letters of the acronym "T" and "I" are those variables that must be considered under the first prong of the reasonableness standard that is — reasonable suspicion. The second two letters, "P" and "S" are those considered under the second prong — reasonable scope. An additional schema might be helpful:

Figure 2

Reasonableness Standard Schema



C. Reasonable Suspicion (TI)

In the *T.L.O.* case, the suspicion test is focused on whether the search is "justified at its inception." So, to determine whether the school official is justified in searching, the Court ruled that there be "reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school."[23]

Justice White said that "the requirement of reasonable suspicion is not a requirement of absolute certainty: 'sufficient probability, not certainty, is the touchstone of reasonableness....'"[24] The California Supreme Court put it well: "[A] search of a student by a public school official is unlawful if predicated on mere curiosity, rumor, or hunch."[25] Another California court recently added to the understanding when it upheld the search of a student's locker for a loaded gun:

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[23] *Irby* at 342.
[24] *Id.* at 346 (quoting Hill v. California, 401 U.S. 797, 804 (1971)).
[25] People v. William G., 221 Cal. Rptr. 118, 127 (1985).

> There must be articulable facts supporting that reasonable suspicion ... In sum, this standard requires articulable facts, together with rational inferences from those facts, warranting an objectively reasonable suspicion that the student or students to be searched are violating or have violated a rule, regulation, or statute.[26]

How then can an administrator tell when the suspicion test is met beyond knowing that there need not be absolute certainty that the search will turn up some incriminating evidence? Referring to the TIPS formula, consideration for the *Thing* (suspected contraband) which is the object of the search along with consideration for the sufficiency of the *Information* that tipped off the school official will aid in satisfying the suspicion test.

1. The Thing (in search of)

When a school official is in search of a gun carried to school by a student, the situation is different than if the object of the search is a pack of cigarettes. The potential danger to others should be considered in determining reasonable suspicion. As a general proposition, the higher the degree of danger the less suspicion required. Of course schools can classify as "contraband" virtually anything that represents a disruption to the environment. Aside from the obvious illegal contraband, schools might wish to prohibit candy. Elementary schools have often prohibited squirt guns, computer games, figure puppets and a variety of toys that make noise or otherwise distract from the educational process. Ironically, there is likely more searching going on in elementary schools when these items are seized than the notable contraband being seized at the high school level. One federal court in Virginia invalidated the searching of whole classes of middle school students even though officials where only searching for personal Walkman radios brought to school against the rules. In this same case, although the search was upheld on other grounds, officials conducted a school-wide search for Magic Markers.[27]

The search for a dangerous thing can be classified as one of the exceptions the courts have made to the probable cause and warrant requirement. Called the "emergency" exception — it can be charac-

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[26] People v. Joseph G., 38 Cal. Rptr. 2d 902, 904-05 (1995).
[27] Burnham v. West, 681 F. Supp. 1160 (E.D. Va. 1987).

terized as a situation where the object of the search is so inherently dangerous that a search must be conducted immediately to avoid injury.[28] A commentator observed that one court has suggested that all searches in school are emergencies because of the generally poor disciplinary conditions.

In *People v. Joseph G.* the student argued that the school did not have a sufficient information base to have searched his locker. School officials based their suspicion on an anonymous telephone call. In finding that there was reasonable suspicion, the court was willing to set aside the relative weakness of the information because the school was searching for a handgun.[29] Of course when searching a student's body rather than his locker the level of interests on the student privacy side increase. Therefore, the sufficiency of information upon which the school official would proceed in a personal search would need to be higher. Nevertheless, when administrators are looking for something dangerous, it does not appear that the court will require much information upon which to base that kind of search. For example, in *People v. Alexander B.*, the student who was searched for a gun challenged the constitutionality of the search based on a lack of reasonable suspicion. The school had searched the boy when an unidentified student yelled from a crowd, "Don't pick on us; one of those guys has a gun." In upholding the search the court said:

> The fact that the student's name either not obtained by school authorities, or obtained and later forgotten was only one of many factors bearing on the reasonableness of the search. *Of greater importance is the fact that the gravity of the danger posed by possession of a firearm or other weapon on campus was great* compared to the relatively minor intrusion involved in investigating the veracity of the unidentified student accusation against a handful of high school age boys.[30]

While the Supreme Court traditionally has looked more favorably upon the emergency exception than upon others,[31] school officials should not assume carte blanche because their school is particularly fraught with dangerous discipline problems. Each case must stand on

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[28] L. Trosch et al., *Public School Searches and the Fourth Amendment*, 11 J.L. & EDUC. 47 (1982).
[29] 38 Cal. Rptr. at 905.
[30] People v. Alexander B., 270 Cal. Rptr. 342, 343 (1990) (emphasis added).
[31] *See* Trosch, *supra* note 26, 47-48.

its own and each search and seizure situation must be analyzed with its own particular set of facts.

A companion to the danger element in the emergency exception is the consideration of *time*. In other words, is there a chance that evidence will be lost if the search is postponed? Trosch has noted that this situation has been referred to by the court as the "now or never circumstances."[32] In school, the common object of the search is drugs, which are easily destroyed. Therefore, if the school official believes that the evidence could be destroyed, the search might be conducted without concern for a high degree of suspicion.[33]

The emergency has always been an exception to the probable cause and warrant requirement. Since the *T.L.O.* decision eliminated the need for school officials to have probable cause or a warrant, of what consequence is the emergency exception? It can be viewed as an element which will mitigate against school officials' need to meet the reasonable suspicion test. It would be hard to imagine a situation where the court would not consider the suspicion test having been met if an "emergency" condition existed in a particular school incident.

What to look for: (1) Does the contraband "in search of" represent an immediate physical danger to students, teachers, or searcher? If so, this could be an "emergency exception" and therefore, little or no information need be obtained. (2) The less dangerous the contraband, the more information the searcher will need before proceeding. Therefore, know your contraband.

2. The Information

a. The Informant

In order to meet the reasonable suspicion test, the decision to conduct a search must be based on reliable information, and from whom information comes can make a difference in meeting this test.

The general standard for assessing the reliability of information was provided by the Supreme Court case of *Illinois v. Gates*.[34] In *Gates*, the Court held that the standard is the "totality of circumstances analysis" where the basis of knowledge of the informant is weighed to decide whether there is probable cause to believe that contraband or evidence is located in a particular place.[35] With such an

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[32] *Id.* at 46.
[33] *Id.*
[34] 462 U.S. 213 (1983).
[35] *Id.* at 230.

open-ended test it seems as though tips from any informant would meet the suspicion test. One commentator noted:

> Given such a relaxed test for the sufficiency of probable cause based on an informant's tip, it would seem that almost any reasonable tip will provide adequate suspicion to justify a school search. Indeed, the lower court decisions in this area suggest that this minimal showing will satisfy Fourth Amendment standards.[36]

However, there are some general gradations of information sufficiency based on the classification of the tipster. Tipsters in the school tend to be one of three types: teachers (and other adult school personnel), students, anonymous phone callers or letter writers, sniff dogs and electronic detection devices (metal detectors).

In addition to the *T.L.O.* Court, lower courts have also upheld searches that were based on information provided by school personnel.[37] Tips from this source usually can be considered reliable. Who are school personnel? To be sure school administrators and teachers are school personnel. One court extended "school personnel" to a number of employees that might not normally be considered:

> It is not generally the responsibility of governmental secretaries, librarians, gardeners or janitors to keep a vigilant and watchful eye over public school students. Nor is it their duty to conduct searches of such students when needed to ensure the students' health and safety. However, if these governmental employees worked for a public school and conducted searches, they would then be held to the same constitutional standard we have established for all public school officials.[38]

Tips from students need to be weighed carefully. However, the courts have continued to look favorably on student information. The Supreme Court of Mississippi has said, "Absent information that a particular student informant may be untrustworthy, school officials may ordinarily accept at face value the information they supply."[39]

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[36] A. Majestic, *Search and Seizure in the Schools: Defining Reasonableness*, 16 SCH. L. BULL. 3 (1985).

[37] *See, e.g.*, Commonwealth v. Carey, 554 N.E.2d 1199, 1203 (1990).

[38] People v. William G., 221 Cal. Rptr. 118, 124 (1985).

[39] *In re* South Carolina, 583 So. 2d 188, 192 (1991).

Even one student can provide the basis for reasonable suspicion depending on the details given. It seems to matter whether the student is giving an opinion or relating a rumor versus having been an eyewitness or having directly been given information. For example, in *State v. Michael G.*, the court upheld a search even though it was based entirely on one student's information. However, the student was an eyewitness:

> A student's direct statement to a person in authority indicating personal knowledge of facts which establish that another student is engaging in illegal conduct may provide school authorities reasonable grounds to search the second student's locker. We caution however that merely relaying rumors or suspicions about another student is not sufficient to provide reasonable grounds.[40]

When one student provided information that was not eyewitnessed nor a result of direct knowledge, it was still upheld because the school used it along with other information.[41] Nor does it seem imperative that the identity of the student be known to school authorities. A California school district used a student informant to search a fellow student but then forgot the name of the informant.[42] A Texas court ruled that the school need not reveal the identity of the student informant to the student being searched.[43]

Tips from anonymous sources have been the subject of litigation. Most courts have upheld school searches based on anonymous tips. For example, in *People v. Joseph G.* a student challenged the search for lack of reasonable suspicion because the information came from an anonymous source. The telephone caller claimed to be a mother. In upholding the search the court said "[T]he fact a school official does not know or remember the name of an individual reporting a violation of the law, particularly involving handguns, is but one factor ... Moreover, the mother here did not merely point to a group of students as possibly being armed but named a particular individual."[44] In contrast, the New Jersey Supreme Court overturned a student's drug possession conviction because reasonable suspicion was lacking

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[40] 748 P.2d 17, 19 (N.M. 1987).
[41] *See* People v. Taylor, 625 N.E.2d 785 (1993).
[42] People v. Alexander B., 270 Cal. Rptr. 342 (1990).
[43] *See* Irby v. State, 751 S.W.2d 670 (1988).
[44] 38 Cal. Rptr. 2d 902, 905 (1995).

due to the use of an anonymous telephone call as the basis for commencing the search. The call came from a person claiming to be the father of a student, and the principal had heard a rumor a year earlier that the defendant was selling drugs at school.[45] However, it should be noted that the caller conveyed a rumor rather than direct knowledge. Even if the caller had been a teacher, it is doubtful the information base would have withstood challenge.

A federal district court in Illinois provided a clear rationale for the use of anonymous information in school searches when it decided *Martens v. District No. 220, Board of Education*.[46] The court upheld the use of an anonymous tip in searching a student suspected of drug dealing. The principal received a phone call from a person identifying herself as someone living in the school attendance area. The caller correctly identified the student and the location and type of contraband the principal was to search. Later that same day, the principal received another anonymous call from a voice he believed to be that of the earlier caller. This time she identified Martens as a student drug dealer and said where in the lining of a coat the principal could find contraband. It held that the anonymous tip was adequate to satisfy the reasonable suspicion test, offering a four-part rationale:

> First, the high school was facing a substantial drug problem that had resulted in the expulsion of many students before Martens. A tip that a Reavis student had drug paraphernalia was thus not inherently implausible. Second, coming from a member of the public rather than the typical police informer from the criminal milieu, the tip was presumptively somewhat more credible. Third, there was substantial evidence indicating the tip was accurate. [The principal] believed that the Martens tip came from the same caller who had accurately indicated that another student possessed marijuana. There is some other evidence suggesting that the tipster was indeed the same person. Both were female, lived in the same area, had discovered their daughter in possession of marijuana, and refused to disclose their identity or phone number. Finally, the Martens tip was not a blanket allegation but rather outlined Martens' role as a drug dis-

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[45] State v. Engerud (*In re* T.L.O.), 463 A.2d 934 (N.J. 1983).
[46] 620 F. Supp 29 (N.D. Ill. 1985).

> tributor, described where he kept his drug paraphernalia and indicated that Martens had the paraphernalia in his possession that day. The detailed nature of the tip weighs in favor of its accuracy.[47]

It is interesting that the court thought a call from the general public was more credible than from a professional tipster. Thus, an anonymous tip can satisfy the suspicion test if (1) there is detail in the information, not a blanket allegation or conveying of a rumor and (2) the allegation is plausible under given conditions within the school environment.

b. Sniff Dogs as Informants

It should be noted that the use of sniff dogs in school takes on two dimensions. First, a dog is a source of information and therefore has been subject to evaluation for sufficiency in meeting reasonable suspicion. However, an interesting additional dimension must be considered when a dog actually touches the person being searched. In these instances, a court is likely to view a dog as a search method or measure used which then is evaluated for its degree of intrusiveness against the age and sex of the student. Elaboration on this additional dimension will be provided in the section on reasonable scope.

The use of sniff dogs as a sufficient basis for establishing reasonable suspicion has been argued in the courts. In this context, a sniff dog is a source of information; he is a "four-legged" tipster. Sniff dogs have been reviewed as reliable by the courts in establishing reasonable suspicion primarily when used for searching inanimate objects. In these instances, the courts are not willing to call a sniffing dog a search.[48] The courts reasoned that students do not have a reasonable expectation of privacy in the *airspace* surrounding lockers or cars. However, the use of a dog to sniff around the airspace next to a student's body may be a search and therefore would require individu-

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[47] *Id.* at 32.

[48] *See* Jennings v. Joshua Indep. Sch. Dist., 877 F.2d 313 (5th Cir. 1989) (upholding sniff of cars); Horton v. Goose Creek Indep. Sch. Dist., 690 F.2d 470, 477-79 (5th Cir. 1982), *cert. denied*, 463 U.S. 1207 (1983) (holding that dog sniffing of lockers and automobiles is not a search, but sniffing of children in this case, where the purpose was to sniff the air around his or her person was a search); *contra*, Doe v. Renfrow, 475 F. Supp. 1012, 1020 (1979) (holding that dog sniffing while walking up aisles between desks is not a search), *rev'd in part on other grounds*, 631 F.2d 91 (7th Cir. 1980) (finding no immunity for school officials' strip search of student following a canine search), *cert. denied*, 451 U.S. 1022 (1981); Zamora v. Pomeroy, 639 F.2d 662 (10th Cir. 1981) (upholding canine sniff of lockers).

alized suspicion. At the point where a dog sniffs a student's body or airspace around the body, the dog stops being a source of information. At this point, it is a search method. It should be noted that when a school official sniffs a student, the courts have not considered this a search.[49]

c. Students' Prior History and Immediate Suspicious Behavior

The reasonable suspicion test can be met when a search involves a student who has a record of contraband activities coupled with some observed immediate behavior that is suspicious of contraband possession. When school personnel search students based on the presence of only one of these factors (history and immediate suspicious behavior) the search has been invalidated. In the case *People v. William G.*, an assistant principal noted that a student was tardy and also carrying a small black calculator case that had a suspicious looking bulge. When Assistant Principal Lorenz spoke to the boy, he tried to hide the case. The boy refused to show the case and said that the assistant principal would have to get a warrant. The case was searched and marijuana was found. In finding that there was no reasonable suspicion to search William the court said:

> Lorenz had no prior information which led him to believe that Williams was in possession of marijuana, or that Williams had otherwise violated the law or a school rule ... suspicion that Williams was tardy or truant from class provided no reasonable basis for conducting a search of any kind ... attempting to hide his calculator case from Lorenz view cannot, standing alone, furnish sufficient cause to search ... Similarly, Williams demand for a warrant did not create a reasonable suspicion upon which to base the search.[50]

Thus, in the *People v. William G.* case, the immediate suspicious behavior was not enough. There needed to have been some specific prior history attached to this student's holding contraband in order for the search to have been valid.

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[49] 681 F. Supp. 1160 (sniffing of a female middle school student's hands by a male principal is not a search); Jones v. Latexo Ind. Sch. Dist., 499 F. Supp. 223, 232-33 (E.D. Tex. 1980) (sniff by school officials instead of canines would not have been a search).

[50] 221 Cal. Rptr. 118 (1985).

The student also won his case in *In the Matter of Pima County Juvenile Action*. Here a student was found underneath some bleachers during class hours. The student was brought to the office and asked to empty his pockets. Drugs were found. The school defended the reasonableness of the search by indicating that the administration was aware of drug use in school. Also, the principal knew that students went to the area of the school bleachers to skip class, smoke or use drugs. He further testified that while it was not routine to require students who are called to the office to empty their pockets, the decision to search this student arose solely because his name had been mentioned in staff conversations during discussions of drug use and sales at the school. The principal said that he had neither seen nor caught this student with drugs previously, and had never received reports from any of the teachers or administrators that they had any specific information regarding this particular student's use or possession of drugs. In fact, the principal had no personal knowledge at all. The individual student monitor who observed the student under the bleachers saw no specific behavior other than the student was there.[51]

In a very similar case, a Texas high school student who did have a history of getting into trouble was not able to convince the court of the absence of reasonable suspicion when he was searched. The student, Bryan Coffman, was seen in the hallway when he should have been in class. The assistant principal recognized Bryan as a student he had disciplined three or four times. When the assistant principal approached the student asking him for a hall pass, the student continued walking away. Upon being pursued Bryan finally stopped and told the assistant principal that he had been in the parking lot. The assistant principal knew the parking lot had been the site of recent thefts. Because of the student's actions, the assistant principal became suspicious about possible criminal activity and asked the student to open the bag. The student first refused but then agreed if the bag were not opened in the hall. The assistant principal then took the bag and suggested they go to his office to open it. As they walked down the hall the student lunged at the assistant principal and the bag trying to take it back. Once in the office the assistant principal found a handgun in the bag. The court held that the student's prior propensity to get into trouble, coupled with the fact that he was in the hall without a pass returning from an area where thefts had previously occurred, formed reasonable suspicion.[52]

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[51] 733 P.2d 316 (1987)
[52] 782 S.W.2d 249 (1989)

Also upholding the presence of reasonable suspicion *In re Fredick B.* involved two students being seen by a school security guard exchanging money. The guard had twice before detained persons for drug-related incidents in that part of the campus. The subsequent search of the students produced a handgun. The court held that the officer's actions were reasonable because he saw the students exchanging money and he had prior knowledge that they were in an area connected with drug use.[53]

In *Coronado v. State*, a student was discovered trying to leave campus under a false excuse. The decision to pat down the student was made when the identity of the student was revealed to the assistant principal. Just eight days earlier that same student had been searched and found to be carrying evidence of drug dealing. The court said that the school had reasonable grounds to suspect that the student was violating school rules by the immediate attempt to "skip" school and by the student's prior history of having been searched.[54]

d. Individualized Suspicion

As early as the mid-seventies, the courts have recognized individualized suspicion as a prerequisite to a constitutional search.[55] Simply put, a searcher must have reasonable suspicion that the person being searched is the one who is in possession of the contraband. In the school setting, the student-teacher relationship is often a group relationship. That is, one teacher — one class, with many students in the class. A practitioner should not confuse school officials' authority to hand out "mass punishment" with the individualized suspicion requirement under search and seizure. It has long been recognized that teachers may punish an entire class even though discipline is not justified for each individual student in the class.[56]

However, school authorities do not have the same authority to deal with students "in mass" in the conduct of a search. The *T.L.O.* Court expressly noted that it would not deal with individualized suspicion issues. However, the Court did suggest that some individualized suspicion might be necessary but it was not an absolute requirement in all cases: "[W]e have held that although 'some quantum of

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[53] 237 Cal. Rptr. 338 (Cal. App. 1987).
[54] 835 S.W.2d 636 (Tex. Crim. App. 1992) (search invalid on scope prong).
[55] *See* United States v. Martinez-Fuerte, 428 U.S. 543 (1976) (citing to Terry v. Ohio, 392 U.S. 1, 21 n.18 (1968) (providing a history of the Court requiring specificity in its Fourth Amendment jurisprudence)).
[56] William L. Prosser, Amer. L. Inst., Restatement (2d) of Torts § 154 (1965).

individualized suspicion is usually a prerequisite to a constitutional search or seizure ... the Fourth Amendment imposes no irreducible requirement of such suspicion."[57]

In *Burnham v. West*,[58] three separate general or sweep searches were conducted within several weeks. [It should be noted that a general search (sometimes referred to as a sweep or dragnet search) is a search conducted on a group of individuals. The problems associated with this type of search will be discussed later.] The first search was conducted when the principal announced that he had discovered defacement of school property and directed all teachers to search all students' bookbags, pockets and pocketbooks for Magic Markers. Note that the principal only saw the defaced property. This was the sole source of information. No students were seen. The teachers proceeded to search as ordered. A few weeks later, a teacher told the principal she had seen several students getting off the school bus with Walkman radios. The teacher provided no identifying information on the students. The principal ordered a school-wide search of all bookbags and pocketbooks for Walkman or similar devices. Some weeks later, a third student body search was conducted when a teacher told the principal that she had smelled marijuana smoke in two hallway areas near the cafeteria. Classes were in progress at the time and no students were in the halls. The principal went immediately to the hallway areas and detected a strong odor of marijuana. The principal ordered the search of the student body. In all three searches students' purses, bookbags, wallets and pockets were emptied in some cases by the students themselves for examination by the teachers and in some cases the teachers reached into these areas.

Because there was a discrepancy in the testimony given in regard to the Magic Marker search, the court did not grant for the students. However, the court did invalidate both the Walkman and the marijuana searches. It noted that the searches lacked individualized suspicion. The principal made no attempt to investigate or narrow the field in order to avoid having to search the entire student body. The court aptly held:

> Even though it is easier and more effective, from a school administrator's point of view, to be able to authorize general searches without the burden of

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[57] 469 U.S. at 342 n.8 (quoting United States v. Martinez-Fuerte, 428 U.S. 543, 560-61 (1976)).

[58] 681 F. Supp. 1160 (E.D. Va. 1987).

> individualized suspicion, this Court finds no genuine, material issue of fact as to the claimed unconstitutionality of the searches under consideration.[59]

Commentators have supported the need for the individualized suspicion requirement in schools.[60] In addition, lower courts have generally required individualized suspicion for searches of a student's *person* and have almost always required individualized suspicion for highly intrusive searches such as strip searches. Indeed, the only exceptions have been when there was an immediate danger such as possession of weapons and, even in these instances, the search was generally narrowed to a small group of students. For example, in *People v. Alexander B.*,[61] a California case, an administrator tried to break up a clash between two groups of students who were known to be associated with gangs in the neighborhood. During the altercation, one unidentified student said, "Don't pick on us; one of those guys has a gun." A police officer standing nearby searched the students and found a machete knife and a scabbard. The state appeals court acknowledged the importance of individualized suspicion, but distinguished this case from other mass searches in that the search was focused on only five or six students and there was considerable potential for danger if no action were taken.

As will be discussed in succeeding sections, most exceptions to the individualized suspicion requirement come when there is danger and/or when the searches are very unintrusive such as metal detector searches for weapons and searches of "things" (i.e., locker, desk, car, luggage).

What to look for: (1) Remember to evaluate the tip and tipster who are providing the reason for conducting the search. Does the tip contain details such as the name of the student who is carrying contraband, the type of contraband being held and where it is located? Is the tipster a teacher, student(s), or anonymous? Teachers or other school employees are the best tipsters. Tips from students are acceptable if more than one is providing information. A tip from one student should be from someone who has a reputation for supplying accurate information. Anonymous tips should be evaluated on the sufficiency of detail being provided. Sufficient detail will qualify the

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[59] *Id.* at 1167.

[60] *See, e.g.*, Martin R. Gardner, *Student Privacy in the Wake of T.L.O. – An Appeal for an Individualized Suspicion Requirement for Valid Searches and Seizures in the Schools*, 22 GA. L. REV. 897 (1988).

[61] 270 Cal. Rptr. 342 (Cal. App. 1990).

source even though anonymous. (2) Reasonable suspicion may be met if the student to be searched has a prior history of suspicious activity that is related to the search. (3) Do not be afraid to rely on one's experience in dealing with search and seizure. If one has some prior experience, this might help in meeting the reasonable suspicion standard. (4) If one plans to search "the person" of a student, i.e., pockets, purse, or clothing that the student is wearing, one should have some notion that this particular student is holding contraband. Mass searches of students' persons will generally not meet the reasonable suspicion test unless there is an immediate danger and even then the search would likely need to be narrowed to a few suspects.

e. Stale Information

A California high school student argued that the school conducted an illegal search because of the absence of reasonable suspicion. He claimed that the search was based on information about an event occurring five days earlier at another location. The interval was from Friday evening to Wednesday afternoon, with the search occurring on Thursday morning. The court held that the interval was not long enough to constitute insufficient reasonableness.[62]

D. Reasonable Scope (PS)

Prong two of the reasonableness standard is reasonable scope. Once the reasonable suspicion test (prong one) is met, reasonable scope should be considered. Recalling the majority opinion in *T.L.O.*, "a search will be permissible in scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction."[63] Referring to the TIPS formula consideration for the "Place" (or person) to be searched along with consideration for the nature of the "Search" itself will aid in satisfying the scope test.

At the time of the writing of the first edition of *Search and Seizure in the Public Schools*, the focus of attention for meeting the scope prong was on choosing a search method appropriate for the age of the student. Also, it was important that the sexes of the pupil and searcher be considered. So, firm in the understanding of the scope issues, states such as Oklahoma committed to statute that school

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[62] People v. Joseph G., 32 Cal. App. 4th 1735, 1741 (1995).
[63] 469 U.S. at 342.

searches "shall be conducted by a person of the same sex as the person being searched."[64] However, more recently the courts have focused on the *nature of the infraction* component of the scope prong. When exploring some of the current issues related to strip searching later in the monograph, it should be noted how two federal appeals courts relied on the nature of the infraction aspect of scope.

The nature of the infraction component has worked against school officials. A Texas court held for the student when school officials searched "beyond" what suspicion provided. A student had been detained and subsequently patted down when he was caught leaving school under a pretext. The court considered the pat down as having met reasonable scope. However, school officials exceeded scope when they searched the student's clothing, locker and car after the initial pat down. The court noted that the pat down made sense given the student was caught skipping school but continuing to search was not based on any information the school officials had obtained prior to or as a result of the pat down. Thus, the searches subsequent to the pat down were "excessively intrusive in light of the infraction of attempting to skip school."[65]

1. The Place (or person being searched)

The place or person being searched has a direct bearing on the scope of the search. The question of scope is a question about the degree of intrusiveness connected with the search. The closer the searcher comes to the body, the higher the intrusiveness and therefore the higher the scope of the search. The highest degree of intrusiveness would be associated with the strip search — the lowest would be the search of an inanimate object such as a locker. Therefore, when searching a student's person a higher degree of procedural regularity is required than when searching a car or locker. When searching a student's person, the typical situation calls for emptying pockets, purse, or school bag. If a student is actually wearing the clothes, purse or bag at the time, then it is a search of a person. If these things (jackets, purse, or bags) are in the student's locker or car then it is not a personal search.

The *T.L.O.* decision was about personal searches. The standard of reasonableness can be directly applied to the conduct of the officials in the search of students. However, the Court expressly refused to

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[64] OKLA. STAT. ANN. tit. 70, §§ 24-102.

[65] Coronado v. State, 835 S.W.2d 636, 641 (Tex. Crim. App. 1992).

outline standards for locker searches: "We do not address the question, not presented by this case, whether a school child has a legitimate expectation of privacy in lockers, desks, or other school property provided for the storage of school supplies."[66]

In the same footnote, however, the Court referred to several school search cases where locker searches were upheld due to the lack of a legitimate student expectation for privacy in their lockers.[67] As one commentator has noted, a majority of the lower courts have treated locker searches as less intrusive than searches of the person.[68] The more "personal" the search, the more compelling interest must be displayed by the school. An example of a compelling interest of the school might be searching for a bomb or a loaded gun. Less compelling would be searching for tobacco because the school has a rule prohibiting the possession of tobacco. A rule of thumb might be, the more personal the search, the more serious reasons the school should have for conducting the search. In addition, the measure used in the search can be more invasive if not a personal search.

Therefore, the "P" in the TIPS formula can serve as a last check for the school administrator or teacher to determine how much information should have been gathered at this point. If it is determined that the school is about to conduct a personal search, then the sufficiency of the information base should be checked. If it is determined that a search of an inanimate object is to take place, then the searcher can perhaps be satisfied with less information.

a. Searches of Lockers and Other School-owned Containers

Prior to *T.L.O.* a number of courts held that students had no reasonable expectation of privacy in lockers, desks, or other school property provided for storage of their belongings.[69] Since *T.L.O.*, cases have held that the reasonableness standard does apply to locker searches.[70] Indeed the Supreme Court of California held that "a student always has the highest privacy interests in his or her own person, belongings, and physical enclaves, such as *lockers*."[71] Most recently a California student challenged the search of his locker when the search

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[66] *Id.* at 337 n.5.
[67] *Id.*
[68] *See* Goering, *supra* note 8, at 150 n.101.
[69] *See* Zamora v. Pomeroy, 639 F.2d 662 (10th Cir. 1981); State v. Stein, 456 P.2d 1 (Kan. 1969), *cert. denied*, 397 U.S. 947 (1970); People v. Overton, 249 N.E.2d 366 (1969).
[70] *See* State v. Michael G., 748 P.2d 17 (N.M. 1987); *In re* Dumas, 515 A.2d 984 (Pa. 1986); State v. Joseph T., 336 S.E.2d 728 (W. Va. 1985).
[71] People v. William G., 221 Cal. Rptr. 118, 126 (1985) (emphasis added).

was based on what he considered a lack of reasonable suspicion. While the court upheld the reasonableness of the search, it noted that "Neither indiscriminate searches of lockers more discreet individual searchers of a locker, a purse or a person, here a student, can take place absent the existence of reasonable suspicion."[72] In Mississippi, a high school student challenged the search of his locker for a handgun. In examining whether the student had a reasonable expectation of privacy in his locker, the court noted that he had exclusive possession of the locker and that he kept it under lock and key. It next went back to *T.L.O.* for guidance. While noting correctly that *T.L.O.* did not specifically decide on locker searches, the Mississippi high court held that children have a expectation for privacy based on the *T.L.O.* description of "reality."[73] The description refers to that place in *T.L.O.* where the Court notes that students must be given privacy to carry personal items on to school grounds.[74] While the Mississippi court held that students have expectation to privacy in their lockers, it noted the expectation is:

> considerably less than he would have in the privacy of his home or even, perhaps, his automobile. Because that interest is less than in these other circumstances and because it necessarily clashes with the broad discretionary authority and responsibility of the school officials, *a lesser showing is required before school officials may have authority to search a student's locker.*[75]

A Massachusetts court noted that while courts since *T.L.O.* recognize the application of the reasonableness standard to locker searches, it is important to consider the effect of a school policy making the lockers subject to search by administrators. "Some courts that have held there to be no reasonable expectation of privacy in a school locker have stressed the factor that such a policy exists."[76] In the instant case, the court noted that the student's homeroom teacher kept a list of locker assignments and corresponding combinations.

The Oklahoma school search statute referred to earlier contains a section which reads:

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[72] People v. Joseph G., 38 Cal. Rptr. 2d 902, 904 (1995).
[73] *In re* South Carolina, 583 So. 2d 188, 191 (Miss. 1991).
[74] *T.L.O.*, 469 U.S. at 339.
[75] 583 So. 2d at 192 (emphasis added).
[76] Commonwealth v. Carey, 554 N.E. 2d 1199, 1202 (Mass. 1990), *citing to* O'Connor v. Ortega, 480 U.S. 709, 717 (1987).

> Pupils shall not have any reasonable expectation of privacy towards school administrators or teachers in the contents of a school locker, desk, or other school property. School personnel shall have access to school lockers, desks, and other school property in order to properly supervise the welfare of pupils. School lockers, desks, and other areas of school facilities may be opened and examined by school officials at any time and no reason shall be necessary for such search. Schools shall inform pupils in the student discipline code that they have no reasonable expectation of privacy rights towards school officials in school lockers, desks, or other school property.[77]

While not a state statute, the Milwaukee Public Schools is guided by a board policy which states:

> School lockers are the property of Milwaukee Public Schools. At no time does the Milwaukee district relinquish its exclusive control of lockers provided for the convenience of students. Periodic general inspections of lockers may be conducted by school authorities for any reason at any time, without notice, without student consent, and without a search warrant.[78]

The use of this "no expectation of privacy" policy was tested in a case involving a random locker search. A Milwaukee high school had been experiencing a number of gun-related incidents. On the day of the random search the principal had received reports from school staff and security personnel that guns were present in the school. Also there were gun sightings on school buses, and rumors that a shootout was to take place. The principal ordered a school security aide to begin searching lockers for guns. After 75 to 100 lockers were searched, the aide finally came upon a locker containing a gun and cocaine. The student who owned the contraband challenged the search for lack of individualized suspicion. In holding for the school district, the Supreme Court of Wisconsin noted:

> School administrators may adopt a locker policy retaining ownership and possessory control of school

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[77] OKLA. STAT. ANN. tit. 70, §§ 24-102.

[78] *See* Isaiah B. v. State, 500 N.W.2d 637, 638 (Wis. 1993).

> lockers and give notice of that policy to students. Because Isaiah B. had no reasonable expectation [of] privacy in his locker, there was no Fourth Amendment violation.[79]

The court went on to note that if school authorities do not have a locker policy like the one in Milwaukee, students might have a *low-ered* reasonable expectation of privacy in their lockers. It is interesting that the court was willing give the full application of the reasonableness standard to privacy in lockers.

To summarize the law regarding locker searches, it can be said that the reasonableness standard applies but not in its fullness. If the school develops clear policies and practices that inform students that they shall not have a reasonable expectation for privacy in school-owned containers, the need for reasonable suspicion to open a locker is minimal. If looking for serious contraband, suspicion may not be required at all. For the school to successfully search lockers without first establishing more than minimal suspicion before entering the locker, it must be absolutely clear to the students that if they want their possessions to remain outside the purview of school officials, they should not put them in the locker. Some Oklahoma public schools even warn students a day in advance that locker searches will be conducted. This practice helps to reduce the expectation for privacy by students.

Of course no school policy nor practice can totally remove all expectations for privacy. This would be contrary to *T.L.O.* which recognized the basic right of students to maintain privacy in personal items brought to school. However, if a school can through policy all but eliminate the expectation for privacy in school- owned containers, where do students get their privacy? The answer must be — on their persons. In other words, students must maintain their privacy by carrying purses, wallets and other personal carrying cases with them at all times. If students were to carry personal items with them at all times, it would therefore require that school officials have to meet the reasonableness standard in seizing any of these items.

An anomaly is created when a student goes to physical education class in a school that has determined through policy that students shall not have an expectation for privacy to school-owned containers. Will the student not have a reasonable expectation for privacy in the

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[79] *Id.* at 641

gym locker? It is typical for the student enrolling in P.E. (in most states a required course) to wear a uniform to class. At the very least some change of clothing is required. How do students maintain privacy for their purses or wallets during gym? Usually there is no place to keep these items "on their person" while doing P.E. It seems likely that the school will have to make an exception for gym lockers and extend an expectation for privacy in those containers or find some creative way for students to maintain privacy from school authorities during gym class.

However, school authorities should he aware that they might "create" an expectation of privacy with student lockers where generally none would exist. For example, assume that a school has a housekeeping goal in mind for its students. Therefore, the school administration reminds students that they are to take responsibility for their lockers. They should keep them clean and to use a common expression "as if it were your room at home." In this scenario, the school might be increasing or even establishing an expectation of privacy.

Another common practice when searching a locker is to call the student to the locker. Calling the student to be present increases the personal nature of the search. In other words it goes the opposite way from the "lower expectation policies." It is also natural that if the student is present, officials have the student participate in the event by holding items as they are finished being examined. With this in mind, it is easy to see that the search of a student's locker with the student present can turn into a personal search. If this happens the information which was used to establish reasonable suspicion (which is minimal for a locker search) can prove to be insufficient for a personal search.

While this next point can still be argued among legal scholars, it needs to be addressed. Does a purse or wallet hanging in a locker have an expectation of privacy status even though it is not with the student at the time? In other words, does the search of a student's purse or wallet require that officials proceed as if it were a personal search regardless of whether the student is wearing the item? The answer must be that it depends on whether the school has utilized lower expectation for locker policies as previously discussed. If the school creates a no expectation for privacy in locker environment, the student could not claim privacy within a no privacy container. In other words, it should be made clear to students that anything, including a purse or wallet, that is in the locker is subject to search. Students can still have their expectation for privacy by taking their purses/wallets with them from class to class. Of course if the school has not developed no expec-

tation practices then it is likely that the search of a purse in a locker will require that reasonable suspicion be met. For that matter, without no expectation policies it is likely that to even enter the locker, officials will need some reasonable suspicion although not as much if a purse in the locker were not included in the search.

b. Vehicle Searches

The search of students' vehicles requires some reasonable suspicion. One court helped with a relative comparison when it noted that "[T]he student's expectation of privacy in a school locker is considerably less than he would have in the privacy of his home or even his automobile."[80] The case law on the subject is reported when vehicle searches have been conducted as part of a search progression of one student. In those cases where the court found that school authorities had reasonable suspicion to stop the student in the first place, the eventual vehicle search was upheld.[81] When the court has found that the school did not have reasonable suspicion to initiate a personal search, the subsequent vehicle search was also invalid.[82] All other facts being equal, it seems likely that a vehicle search must be based on more reasonable suspicion than a locker search but not as much as a personal search.

Whether or not students have access to their cars during the day has a bearing on the degree of interest the school has in a search and therefore the degree of reasonable suspicion needed for a search. If students do not have access to their cars, the extent to which the cars become part of the routine in the school environment is minimal to nonexistent. In that case the expectation for privacy in the car is treated more like that of the home than that of the locker. If the school searches a car in what essentially is a closed campus, the school's interest will be minimal and therefore individual reasonable suspicion should be present. If the students have access to cars throughout the day or even just during the lunch break, the cars become part of the area of activity for the students. In this case the vehicles become more like their lockers than their homes. Having access to the cars reduces the expectation for privacy especially if the school announces that it is going to engage in parking lot surveillance.

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[80] *In re* South Carolina, 583 So. 2d at 191-92.
[81] *See* State v. Slattery, 787 P.2d 932 (Wash. Ct. App. 1990); *In re* R.R.B. v. State, 583 So. 2d 908 (Miss. 1991).
[82] Coronado v. State, 835 S.W.2d 636 (Tex. Crim. App. 1992).

What to look for: (1) Does one know the reasons why the search of a student is to be conducted? Generally, the more personal the search, the better the reasons must be. The search of a student's pockets or purse must be more compelling than the search of a locker. (2) If one is conducting a general locker search throughout the school, make sure that the students know in advance that the school makes a practice of routine locker inspection.

2. The Search Methods

In its elaboration of the meaning of reasonable scope, the Supreme Court said that the search should not be "excessively intrusive in light of the age and sex of the student and the nature of the infraction."[83] When the Supreme Court talks about being "too intrusive" they are generally referring to strip searches. When they couple the age and sex of the student with their concern for excessive intrusiveness, it comes close to a warning about using strip searches on young children of the opposite sex. As one commentator has observed:

> In crafting the second prong of its reasonableness test, the Supreme Court appears to be sending an implicit warning about the use of "strip searches." As Justice Stevens said in his dissent: "The Court's standard for evaluating the 'scope' of reasonable school searches is obviously designed to prohibit physically intrusive searches of students by persons of the opposite sex for relatively minor offenses."[84]

a. Specific Methods

The best practice is to try to produce the contraband with as little intrusiveness as possible. The searcher should start with the least intrusive method and work up until the item is obtained. In other words, school officials should not begin with a strip search in order to simply save time.

Asking students to "empty pockets" or purses is the least intrusive search since the student participates and no physical contact is made between the parties. As the degree of body contact increases (or in the case of strip searching — body revealed) so does the need for

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[83] *T.L.O.*, 469 U.S. at 342.

[84] *See* Trosch, *supra* note 23, at 7 (quoting in part 105 S. Ct. at 744 n.9).

the searcher to be aware of the student's age and sex. The "pat down" method will often be used by school security personnel in searching for weapons. "Reaching" into pockets, purses or bags to find contraband would increase intrusiveness, but only if the student is wearing the clothes or items at the time. Otherwise a search of this kind would be treated as a search of an inanimate object.

At the time of the writing of the first edition of *Search and Seizure in the Public Schools*, it was safe to say that school officials could rely on an age/intrusiveness formula that was direct. In other words, the older the student the more intrusive the search methods could become. However, as of this writing it appears that the proportional relationship between age and search method is direct up to strip searching. In upholding the validity of a strip search of a sixteen-year-old male student, the Seventh Circuit said:

> The impact of the search will also vary with the age of the child. Perhaps counterintuitively, a very young child would suffer a lesser degree of trauma from a nude search than an older child. As children go through puberty, they become more conscious of their bodies and self-conscious about them. Consequently, the potential for a search to cause embarrassment and humiliation increases as children grow older.[55]

It is ironic that the Seventh Circuit would note that as students get older they become more impacted by being searched and uphold a strip search of a sixteen-year-old. Nevertheless, the inverse relationship that is referenced is attached to those searches where body parts are exposed.

b. Metal Detector Searches as a Condition for Entering School

With an increased concern about violence and the possibility of weapons in schools, some school districts have begun to use metal detectors as a condition for entering the building. These devices may vary from hand-held magnetometers to free-standing metal detectors such as those found in airports. The major legal problem that school authorities encounter when using this search method is that these searches are conducted without individualized suspicion. To date, the

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[55] Cornfield v. Consolidated High Sch. Dist. No. 230, 991 F. 2d 1316, n.1 (7th Cir. 1993).

only recorded court case addressing the legality of metal detectors in the school setting is *People v. Dukes*.[86] In this case, a switchblade knife was found on Tawana Dukes, a student in a New York City high school who was searched after having set off a metal detector scanning device.

Ruling for the school district, the court maintained that measures such as the use of metal detectors should be allowed when there is a danger to the safety of the school. The court stated that metal detector searches were minimally intrusive and characterized their use as a type of "administrative search." In addition, the school had strict guidelines regarding the use of metal detectors. They included random searching as well as clear, written procedures and a written script for searchers to follow.[87] Likewise, in an exhaustive opinion on this topic, the Attorney General of California agrees that metal detector searches are legal if procedural safeguards are intact.[88]

While there is some authority to uphold the use of metal detectors as an admission condition, school authorities should be cautious. Legal scholars continue to be suspect about the lack of individualized suspicion in conducting a search of each student as they enter the building. Analogizing the school to airports can be risky. Even at airports, the justification for this type of search breaks down when submission to a metal detector is compulsory. A distinction should be made between the use of a detector at locations where members of the public can prevent the search by choosing not to enter and those locations where persons must enter. Unlike a passenger at an airport the student is not free to terminate the search. The student is required to comply with the compulsory education law. In a recent Supreme Court case Justice Kennedy suggested that a suspicionless airport magnetometer search is reasonable because any passenger can avoid the search by electing not to board. Therefore, to extend the argument, it is unconstitutional to conduct a suspicionless magnetometer search upon a person who cannot terminate the search. A public school student is such a person.[89]

Later in this monograph, the issue of drug testing student athletes will be explored. There is a relationship between drug testing of student

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[86] 580 N.Y.S.2d 850 (N.Y. Crim. Ct. 1992).

[87] *Id.*

[88] 75 Op. Cal. Att'y Gen. 155 (1992) (providing an overview of law related to metal detector use in public schools).

[89] National Treasury Employees Union v. Von Raab, 489 U.S. 656, 675 n.3 (1989); Donald L. Beci, *Weapons at School: A Challenge to our First Principles*, 20 SEARCH AND SEIZURE LAW REPORT 124, May, 1993.

athletes and metal detecting as a condition for school building entry. Both are a form of suspicionless administrative searches. As such, the standard for these types of searches will apply. In invalidating a high school student athlete random drug testing program, the United States Circuit Court of Appeals for the Ninth Circuit held that the need for the program did not rise to the level of "compelling" within the meaning of the standard. The facts showed that there were some drug problems among the athletes. However, much of what the school district did could be characterized as preventative. This is not enough. Relying on two recent Supreme Court decisions — *National Treasury Employee Union v. Von Raab*[90] and *Skinner v. Railway Labor Executives Ass'n*[91] — the Ninth Circuit held, "having uncaring, disrespectful, drug-impaired children in our schools is tragic ... However, it is not the type of potential disaster that has caused the Court or us to find a government interest compelling enough to permit suspicionless testing."[92]

Turning back to metal detection searching as an entry requirement, the application is clear. In order for a school to use a metal detecting search for entry to school, it will have to show that there is an immediate, acute and exigent situation in that school. The compelling interest standard might be met if the school had an immediate and severe drug problem or recent student shootings.[93]

c. Searches of Students' Luggage

Courts are split regarding the mass searching of students' luggage prior to field trips. In *Kuehn v. Renton School Dist. No 403*,[94] a Washington state case decided a few days before *T.L.O.*, the court invalidated a search of luggage of students who were about to go on a band trip. School authorities defended the search with two arguments. First, the school announced in advance that the search would take place prior to departure. Students had warning before bringing their luggage that it would be inspected for alcohol. Second, the band activity as well as the planned trip was voluntary. If the search procedure was objectionable to anyone, that individual did not have to go on the trip. The court rejected the school's arguments saying: "The general search is anathema to Fourth Amendment and [state consti-

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[90] 489 U.S. 656 (1989).
[91] 489 U.S. 602 (1989).
[92] Acton v. Vernonia Sch. Dist., 23 F.3d 1514 (9th Cir. 1994).
[93] *See* Lawrence F. Rossow & Jerry Parkinson, 36 SCHOOL LAW REPORTER 1-2.
[94] 694 P.2d 1078 (Wash. 1985).

tutional protections], and except for the most compelling situations, should not be countenanced."[95]

In a more recent case, *Desilets v. Clearview Regional Board of Education*,[96] similar reasons were given to justify searches of students' hand luggage prior to field trips and the court upheld the searches. Here, the rationale was that such searches were justified at their inception because of "the unique burdens placed on school personnel in the field trip context" and reasonable in scope because they were limited to searches of hand luggage. Also, the *Desilets* court was particularly concerned that students might bring potentially dangerous items on these trips.[97]

In sum, the legality of luggage searches in schools seems to differ according to the state or jurisdiction of the school. However, it is more likely that such searches would be justified if: the trip is voluntary, the school has guidelines regarding the searches, students are notified in advance, the searches are limited in scope, and probably most importantly if the searches are aimed toward confiscation of potentially dangerous items.

d. Sniff Dogs as a Method

As discussed in an earlier section, the use of a sniff dog may be considered a search method if the dog touches the student. In ruling against the school district, the court in *Horton v. Goose Creek Independent School District* noted that sniffing is a method of search that has a relatively high degree of intrusiveness:

> Intentional close proximity sniffing of the person is offensive whether the sniffer be canine or human. One can imagine the embarrassment which a young adolescent, already self-conscious about his or her body, might experience when a dog, being handled by a representative of the school administration, enters the classroom specifically for the purpose of sniffing the air around his or her person.
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> We need only look at the record in this case to see how a dog's sniffing technique — i.e., sniffing around each child, putting his nose *on* the child and scratch-

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[95] *Id.* at 1082.
[96] 627 A.2d 667 (N.J. Super. Ct. App. Div. 1993).
[97] *Id.* at 673.

> ing and manifesting other signs of excitement in the case of an alert — is intrusive.[98]

Another case also ruled against sniff searching but implied that the decision might have gone otherwise had there been individualized suspicion.[99]

e. Strip Searching

Clearly, the highest degree of intrusiveness is associated with a strip search. While the definition of a strip search varies depending upon the state or jurisdiction, strip searches always involve the removal of some clothing and generally imply that a student's underwear is revealed. Strip searches are deemed to be so intrusive that five states (California, Iowa, Oklahoma, Washington, and Wisconsin) have enacted legislation prohibiting these practices by public school officials.[100] In addition, the majority of court cases involving strip searching of students have been decided against school authorities. It is not always clear when a student might be considered being "stripped."

The Alabama Supreme Court held that when a fifth-grade girl was required to remove her shoes while the teacher of the same sex felt inside the socks for money, the search did not violate the reasonableness standard.[101] An Illinois federal court defined strip search as "the removal or rearranging of clothing or the causing of such in order to visually inspect the body of the person exposed."[102] The California statutes require that no school employee conduct a search that involves "removing or arranging any or all of the clothing of a pupil to permit a visual inspection of the underclothing, breast, buttocks, or genitalia of the pupil."[103] State law in Oklahoma says that "No student's clothing, except cold weather outerwear, shall be removed prior to or during the conduct of any warrantless search."[104] The state statute in Wisconsin indicates that a strip search means "a search in which a detained person's genitals, pubic area, buttocks or anus, or a detained female person's breast, is uncovered and either is exposed to

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[98] 690 F.2d 479 (5th Cir. 1982), *cert. denied*, 463 U.S. 1207 (1983).
[99] Jones v. Latexo Indep. Sch. Dist., 499 F. Supp. 223 (E.D. Tex. 1980).
[100] CAL. EDUC. CODE § 49050 (West 1993); IOWA CODE ANN. § 808A.2 (West 1994); OKLA. STAT. ANN. tit. 70, §§ 24-102 (West Supp. 1994-1995); WASH. REV. CODE ANN. §28A.600.230(3) (West Supp. 1995); WIS. STAT. ANN. §§ 118.32, 948.50 (West 1991).
[101] 508 So. 2d 1170 (Ala. 1987).
[102] E.Z. v. Coler, 603 F. Supp. 1546, 1548-49 (N.D. Ill. 1985).
[103] CAL. EDUC. CODE § 49050, tit. 2, Div. 4, ch. 6, art. 8.
[104] OKLA. STAT. tit. 70, §§ 24-102.

view or is touched by a person conducting the search."[105] Pennsylvania has proposed legislation on school searches which includes a definition of strip search as "the removal of clothing, exposing a student's undergarment or the skin of the student's torso."[106]

In *Doe v. Renfrow*[107] the court held that although a sniff dog had provided reasonable suspicion that a student was carrying drugs, it did not justify a strip search. In *Tarter v. Raybuck*,[108] the court gave body cavity searches as an example of school searches which would never be justified, stating that "privacy interests of the youth would clearly outweigh *any* interest in school discipline or order which might be served by such a search."[109] At least one court has gone so far as to maintain that mere "reasonable suspicion" can never justify a strip search.[110] In addition, several commentators have suggested that a standard as high as probable cause, and perhaps a warrant, should be required for a court to validate a strip search.[111]

A number of lower courts after the *T.L.O.* decision have also used the reasonableness standard to invalidate strip searches.[112] Put plainly, the courts have, until most recently, held that strip searching a pupil exceeds the reasonable scope requirement.

However, two recent courts have upheld strip searches as long as multiple sources of "evidence" support the reasonable suspicion requirement. It would pass on the scope requirement if the officials were looking for drugs in difficult to find areas of the body i.e. the crotch. Using a "totality of the circumstances" concept first announced in *T.L.O.* to lay the foundation for the reasonableness standard, these two appeals courts justify strip searching based on the nature of the contraband not on the sex and age of the student as previous courts.

In *Williams v. Ellington*,[113] school authorities requested Angela

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[105] Wis. Stat. Ch. 118.32 § 968.255(1)(b).

[106] Pa. H.B. No. 1672, as amended September 29, 1993.

[107] 631 F.2d 91 (7th Cir. 1980), *reh'g denied*, 635 F.2d 582 (7th Cir. 1980), *cert. denied*, 451 U.S. 1022 (1981).

[108] 742 F.2d 977 (6th Cir. 1984), *cert. denied*, 470 U.S. 1051 (1985).

[109] *Id.* at 982-83 (emphasis added).

[110] *See* M.M. v. Anker, 607 F.2d 588, 589 (2d Cir. 1979).

[111] *See, e.g.*, Myron Schreck, *The Fourth Amendment in the Public Schools: Issues for the 1990's and Beyond*, 25 Urb. Law. 117, 147 (1993); Steven F. Shatz et al., *The Strip Searching of Students and the Fourth Amendment*, 26 U.S.F. L. Rev. 1, 9 (1991).

[112] *See, e.g.*, Allen v. Koon, 720 F. Supp. 570 (E.D. La. 1989); Cales v. Howell Pub. Sch., 635 F. Supp. 454 (E.D. Mich. 1985); State v. Mark Anthony B., 433 S.E.2d 41, 46 (W. Va. 1993).

[113] 936 F.2d 881 (6th Cir. 1991).

Williams, a female high school student suspected of drug possession in a Kentucky public school, to remove her T-shirt and lower her jeans to her knees. The Sixth Circuit Court of Appeals upheld this search as reasonable because school officials based their suspicion on a number of factors including a tip from another student, an incriminating letter found in typing class, a teacher's report of odd behavior, and concerns about drug use and distribution voiced by Angela's father.[114]

In *Cornfield v. Consolidated High School District No. 230*,[115] Brian Cornfield, a student at an Illinois public high school, was suspected of concealing drugs after a teacher's aide observed an "unusual bulge" in his sweat pants. The aide reported her observation to school authorities who followed up with an observation and search the following day. Male school officials requested Brian to remove all his clothing as they stood at a distance conducting a visual inspection of Brian's body as well as a physical inspection of his discarded clothing. Brian was allowed to put on a gym uniform while they searched his clothing.[116]

The *Cornfield* court held that the search was reasonable because school officials based their decision to search on a number of factors including several observations of the unusual bulge, reports from teachers and administrators stating that Cornfield had said that he had failed a urinalysis for cocaine and that he had once "crotched" drugs during a police raid at his mother's house, reports from the school bus driver who said that he had smelled marijuana where Brian had been sitting on the bus, a report from a student who allegedly saw Brian smoking marijuana on the bus, a tip from another student that Cornfield was selling marijuana to students, and a call from a local police officer who had received a tip that Cornfield was selling marijuana. Even though Cornfield denied some of these allegations, the court maintained that the recent observations coupled with these other incidents resulted in a "cumulative effect" which supported a reasonable suspicion that Brian Cornfield was indeed "crotching" drugs.[117]

In both of these cases the courts justified the strip searches not on the appropriateness of the method given the age and sex of the student but rather on the "nature of the contraband." In *Williams*, the court held in part that:

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[114] *Id.* at 887.
[115] 991 F.2d 1316 (7th Cir. 1993).
[116] *Id.* at 1319.
[117] *Id.* at 1322-23.

> Defendants were not unreasonable, in light of the item sought (a small vial containing suspected narcotics), in conducting a search so personally intrusive in nature ... Nor was the scope of the search unreasonable, taking into account the size of the clear, glass vial that was sought and the suspected nature of the white powdery substance contained in the vial.[118]

In *Cornfield*, even though the court recognized the harm a strip search might have on the sixteen-year-old male special education student (behavior disordered), it upheld the search:

> On the one hand, the sixteen-year-old Cornfield was of an age at which children are extremely self-conscious about their bodies; thus, the potential impact of a strip search was substantial. However, given Spencer and Frye's suspicion that Cornfield was crotching drugs, their conclusion that a strip search was the least intrusive way to confirm or deny their suspicions was not unreasonable.[119]

It should be noted that both of these cases involved individualized suspicion, that is a particular student (not a group of students) was suspected of drug possession. Also, the students were searched by, and only in the presence of, school officials of the same gender as the student. And in neither case was the student inappropriately touched.[120] These two cases suggest that the long-standing principle that strip searching is unlawful needs to be re-examined. It appears that if school officials are searching after drugs, carefully hidden on the body, strip searching is not unreasonable.

What to look for: (1) Be aware that the method used for the search is appropriate for the age and sex of the student. The more intrusive the method, the older should be the student. Avoid having members of the opposite sex act as searchers — this greatly decreases chances of meeting the reasonable scope standard. (2) Avoid strip searching if

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[118] Id. at 887.

[119] *Cornfield*, 991 F.2d at 1323.

[120] *See* Lawrence F. Rossow & Brenda Stubblefield, *Student Strip Search Upheld: Williams v. Ellington*, 75 EDUC. L. REP. 723 (1992); Tamela J. White, *Williams v. Ellington: Strip Searches in Public Schools — Too Many Unanswered Questions*, 19 N. KY. L. REV. 513 (1992); Jacqueline A. Stefkovich, *Strip Searching After Williams: Reactions to the Concern for School Safety?*, 93 EDUC. L. REP. 1107 (1994).

at all possible. This method is forbidden by a number of states and has only been upheld by a very few courts when the reasonable suspicion was aimed at a specific student, was supported by a totality of circumstances, and posed danger to other students. Courts have not upheld strip searches of groups of students or strip searches for money. However, both the United States Circuit Courts of Appeal for the Sixth and Seventh Circuits have upheld strip searches when school officials were looking for drugs contained in small containers that could be concealed in hard to find areas of the body. (3) When using sniff dogs as a method for personal searches, make sure one has reasonable suspicion well in hand and that one can particularize to individual students. A general "dragnet" search with a sniff dog is only advisable for searching inanimate objects which technically is not a search.

IV. Other Considerations

A. Penalties

As with many of the personal freedoms enjoyed by citizens, constitutional protections are supported by penalties for those who fail to act consistent with the law. In the case of the Fourth Amendment, the penalty in criminal cases is the application of the *exclusionary rule*. This penalty would prevent the use of evidence found in the illegal search. In most instances, without the evidence, the authorities have no case. Whether the exclusionary rule applies to school searches can be debated. However, it is possible that school officials could be held personally liable for an illegal search. This allows students to seek damages.

1. Exclusionary Rule

The Supreme Court has characterized the purpose of the exclusionary rule as "a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect rather than a personal constitutional right of the party aggrieved."[121]

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[121] United States v. Calandra, 414 U.S. 338 (1974). While the majority of the Court has chosen to focus on the deterrent aspect, as Justice Brennan noted in his dissent, the rule was also designed to preserve the integrity of the courts, which are charged with supporting the Constitution. *Id.* at 357-59 (Brennan, J., dissenting).

The rationale supporting the exclusionary rule is that if authorities know the evidence they work so hard to obtain may be thrown out of court, if search and seizure requirements are not followed, it will deter unlawful police action. But, does the exclusionary rule apply to the actions of school officials? This is the question New Jersey asked the Supreme Court to decide in *T.L.O.* After hearing oral arguments, the Court decided not to address the issue. One commentator has suggested that there were not enough votes on the Court to abolish the exclusionary rule, so the Justices decided to take another issue.[122] As with so many of the unresolved issues in *T.L.O.*, lower court decisions must be used to provide the answers.

Not much has changed in this area of public school search and seizure law since the writing of the first edition. The cases which treated the issue a decade ago still appear to be "good" law.

In order to determine whether the exclusionary rule applies or not, it must first be determined whether the evidence obtained is used to prosecute criminally in a court of law or whether the evidence is to be used in a school disciplinary procedure. If the evidence is to be used to prosecute criminally, an illegal search is likely to trigger the exclusionary rule. In *Gordon J. v. Santa Ana Unified School District*,[123] a high school student was subjected to a personal pocket search based on insufficient suspicion. The vice principal had observed only the student making an unusual number of phone calls throughout the day. The court held that the exclusionary rule was applicable when students are to be prosecuted criminally, stating:

> While we concur with the idea that the Fourth Amendment and the exclusionary rule are not coextensive, we must disagree with a line of demarcation which would treat prosecuted high school students differently from any other defendant. It is no less offensive to the Constitution to permit the introduction of unlawfully obtained evidence in a juvenile or criminal prosecution simply because the site of its improper acquisition happened to have been a high school campus. Arguably, it is more so. We would hold that the exclusionary rule is fully available in criminal prosecu-

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[122] *See* David O. Stewart, *And in Her Purse the Principal Found Marijuana*, 71 A B A J. 51, 54 (1985).

[123] 208 Cal Rptr. 657 (Cal. Ct. App. 1984).

> tions and juvenile proceedings with respect to evidence illegally obtained by high school officials.[124]

Likewise, the Supreme Court of California applied the exclusionary rule to a search of a student for marijuana. School officials were attempting to gain evidence that they knew would revoke the student's probation from juvenile authorities. Since the purpose of the search was for criminal purposes the fruits of the illegal search must be excluded. However, it should be noted that the court did apply the reasonableness standard not probable cause to the search. Therefore, the exclusionary rule did apply to a "school type" search because the evidence was to be used in a criminal proceeding.[125]

If the searching school official limits the use of obtained evidence to disciplinary proceedings (generally suspension), it is uncertain whether the exclusionary rule will apply to an illegal search. Some cases have held that the exclusionary rule *does* apply to disciplinary procedures. In *Jones v. Latexo Independent School District*[126] a federal district court held that the school could not punish students who were hiding drug paraphernalia in their cars because the evidence was illegally obtained:

> Having obtained evidence against the plaintiffs by means of an unconstitutional search, the defendants could not use that evidence as a justification for imposing punishment. Although criminal proceedings were never instituted against the students, the [F]ourth [A]mendment protects citizens against unreasonable invasions of privacy by government officials in the civil area as well.[127]

In contrast, the *Gordon* court, while protecting the student from criminal prosection, differentiated disciplinary hearings. The court reasoned that the use of the exclusionary rule would cause harm to the school environment:

> [W]e hold the exclusionary rule inapplicable in high school disciplinary proceedings — even where, as here, they are concededly directed in part toward punishment

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[124] *Id.* at 665.
[125] People v. William G., 709 P.2d at 1297-98.
[126] 499 F. Supp. 223 (E.D. Tex. 1980).
[127] *Id.* at 237.

> of the offending student. The social cost in terms of harm to other students, to say nothing of the damage to the morale of parents and teachers, is too dear.[128]

Limiting the use of the exclusionary rule is consistent with what some observers see as a trend of the Supreme Court toward eliminating the exclusionary rule altogether.[129] On the conservative side, the practitioner who follows the *T.L.O.* reasonableness standard will not have to worry whether the exclusionary rule applies or not.

2. School Officials' Liability

The issue of school officials' liability for an illegal search continues to be one of the more important questions in search and seizure law.[130] Not all illegal student deprivations are the same. Some deprivations involve students' property interests such as an illegal suspension. Other deprivations involve what are known as fundamental freedoms. Depriving students of their Fourth Amendment rights implicates a fundamental freedom. Therefore, the federal statute in 42 U.S.C. Section 1983 can be used by students who claim a Fourth Amendment violation. The significance of this statute is that it allows the student to recover damages from school districts who might otherwise be immune. Whether the school district is immune will in large measure depend on the extent to which the law which the school violated is well-settled. In other words, have the requirements for conducting a legal search in the school setting been around long enough that school officials should know about it?

Prior to *T.L.O.* the status of search and seizure law in schools was still in flux. For example, an early federal district court decision held that although fifth-grade students were subjected to a strip search, school authorities had qualified good faith immunity. Students did not recover compensatory nonpunitive damages since they could not show that the school officials should have known the search was unreasonable or that the officials acted with malicious intent to deprive constitutional rights.[131]

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[128] Gordon J. v. Santa Ana Unified Sch. Dist., 208 Cal. Rptr. 667 (Cal. Ct. App. 1984).

[129] *See* Goering, *supra* note 7, at 147 n.82, *citing* Arons, *The Rise of Police Logic, in* THE RIGHT TO PRIVACY (G. McClennan ed. 1976), *reprinted in* Law, Society, and Human Values II-73 (W. Rich, R. Schwartz & J. Skolnick eds., 1984) (unpublished manuscript).

[130] *See* Joseph R. McKinney, *School District Liability for Unreasonable Searches and Seizures*, 60 SCH. BUS. AFF. 44 (1994).

[131] Bellmer v. Lund, 438 F. Supp. 47, 54 (N.D. N.Y. 1977).

However, other early cases held that school officials are indeed liable for damages. In *Picha v. Wieglos*,[132] a female high school student brought action against three school officials claiming that in the course of their search for drugs they violated her civil rights. The court held that the unreasonableness of the search was sufficiently settled by law to deny the school officials' claim of immunity. Because the school officials *should have known* that students have rights under the Fourth Amendment, this was tantamount to malicious intention.[133]

In *Doe v. Renfrow*,[134] a high school female was strip searched as a result of a sniff dog alert. The court held the school administrators personally liable:

> It does not require a constitutional scholar to conclude that a nude search of a thirteen-year-old child is an invasion of constitutional rights of some magnitude. More than that: it is a violation of any known principle of human decency. Apart from any constitutional readings and rulings, simple common sense would indicate that the conduct of the school officials in permitting such a nude search was not only unlawful but outrageous under "settled indisputable principles of law."[135]

In a Ninth Circuit case, fifth-grade students were strip searched because the principal and classroom teacher believed that the students were in possession of drugs.[136] The court found that the school officials could have qualified immunity if they believe they have reasonable cause to search the students. However, since many courts had generally held that student searches are subject to Fourth Amendment standards, the court held that school officials should have known that students had constitutional protections at the time of *the* search. Therefore, the students were entitled to damages and attorney's fees.[137]

Since *T.L.O.*, search and seizure law for schools has become more settled but at the same time more complex. The publication of this

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[132] 410 F. Supp. 1214 (N.D. Ill. 1976).
[133] *Id.* at 1221.
[134] 631 F.2d 91 (7th Cir. 1980), *reh'g denied*, 635 F.2d 582 (7th Cir. 1980), *cert. denied*, 451 U.S. 1022 (1981).
[135] *Id.* at 92.
[136] Bilbrey v. Brown, 738 F.2d 1462, 1466 (9th Cir. 1984).
[137] *Id.* at 1472.

very monograph is an indication of the increase of school-searching activity and thus increased litigation. The general increase in activity in any area of the law tends to invite new ways to interpret standards for the variety of situations that develop in today's schools. For pre-*T.L.O.* administrators it may have been enough to simply recognize that student searches must be reasonable. Today that is not enough. For example, in a recent case decided by a Virginia federal court, the question was whether a principal was liable for knowing the "individualized suspicion" requirement for school searches. In *Burnham v. West*, the principal of a middle school conducted a series of general searches on the student body looking for contraband. The court found that the searches were invalid because they lacked individualized suspicion. The principal had reasonable suspicion to know that there was contraband "somewhere" in the student body. He just did not know which student or students were carrying the contraband. So, everyone was searched. The students who challenged the searches asked for damages under the civil rights statute. The question then for the court is, should the school district have a qualified immunity from damages. The court held for the school district saying:

> While the defendants must certainly be charged with knowledge that the Fourth Amendment protects students' legitimate privacy interests ... defendants cannot be charged with knowledge of the individualized suspicion requirement in the circumstances of this case ... It follows, therefore, that no jury could reasonably award punitive damages for disregarding such a requirement.[138]

To summarize, school officials can be held personally liable *if* a student can prove that the official acted with malice in denying constitutional rights. Personal liability can also occur when a school official acts with ignorance or disregard for the law. Absent these conditions, a school official has immunity. When strip searching, an official would be hard pressed to find a court willing to support immunity if the search is not reasonable. Even though a school official may be protected from personal liability under certain circumstances, a student may still be successful in a suit against the school for civil damages.

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[138] *Id.* at 1168.

B. Police Involvement

In order for police to conduct a search in a public school, they must meet a higher standard than school officials. Probable cause and the warrant requirement apply to police searches; the reasonableness standard applies for school officials' searches. Because police must meet this higher standard, one commentator has observed that "police will on occasion seek school assistance in searching students. The stronger probable cause standard to which police must adhere makes it more advantageous and opportune for police to merely convince a school principal that a search is needed."[139] Of course, the opposite is often true. Police may become involved at the request of school officials. Whether police or school officials initiated the request for involvement, along with other facts, can make a difference as to which standard applies. The Supreme Court refused to address this question in *T.L.O.*, stating that:

> We here consider only searches carried out by school authorities acting alone and on their own authority. This case does not present the question of the appropriate standard for assessing the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies and we express no opinion on that question.[140]

However, as with other issues in search and seizure law, lower courts have provided some guidance. If the police are involved in the activity, the task of the court is to determine the extent of police involvement. Was the search primarily school official directed or police directed? The answer will provide for the court specific standards to use in evaluating the search.

In addition to the extent of police involvement, whether the purpose of the search was to gain evidence for a school disciplinary proceeding or for a criminal prosecution is determinative. If the police are involved, a court assumes that at least some aspect of the search might involve criminal evidence.[141] The target for police is criminal evidence. The police would not be present if there were not a possibil-

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[139] KERN ALEXANDER & M. DAVID ALEXANDER, THE LAW OF SCHOOLS, STUDENTS, AND TEACHERS IN A NUTSHELL, § 7.6 at 141 (1984).

[140] 469 U.S. at 341 n.7.

[141] *See* Joseph R. McKinney, *The Fourth Amendment and the Public Schools: Reasonable Suspicion in the 1990s*, 91 EDUC. L. REP. 455 (1994) (asserting that all of the school search decisions in the 1990s involved criminal offenses rather than violation of school rules).

ity that they might obtain criminal evidence. The police have no interest in internal school disciplinary matters. Once more it is doubtful that school officials would call the police because they felt incapable of handling their own internal discipline. There is a presumption that school officials call because they suspect criminal activity and wish to give police the opportunity of "making a case."

In the *Picha* decision referred to earlier, the school initiated a call to the police for their assistance with three girls suspected of carrying drugs. However, when the police arrived the strip search was conducted by the school nurse. In this instance the court ruled that the probable cause standard applied even though it appears as though the role of the police was minor. There is some suggestion that the court's position might have been different if the student had not been strip searched. In other words, was it the strip search and not simply the presence of the police that required the higher standard?

Clarification was provided by a case in the aftermath of *T.L.O.* in *Martens v. District No. 220*[142] when a student was asked to empty his pockets by the police, the court said the reasonableness standard, not probable cause applied. The court reasoned first that the facts were developed by school officials and the call to the police was initiated by them. Second, school officials not the police, made the initial decision to detain and search the student. Third, no criminal investigation was contemplated. Fourth, the student would have been searched anyway by school officials had the police not been available. A Colorado court ruled similarly in *State v. P.E.A.*[143] In this case, a tip had come from the police, but the entire investigation, including the search, was handled by school authorities.[144] The case makes an important contribution by noting the possible issue of the "silver platter" in school searches when police are involved. The silver platter doctrine is one which prevents police from circumventing the Fourth Amendment by having a private individual conduct a search or make a seizure that would be unlawful if performed by the police themselves. While school officials are not private citizens, they are government agents who do not have to meet the probable cause standard. Can the police ask a school official to conduct a search because they lack probable cause but the reasonableness standard is likely satisfied? No! In the instance where school officials are searching "for" the

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[142] 620 F. Supp. 29 (N.D. Ill. 1985).

[143] 754 P.2d. 382 (Colo. 1988).

[144] *See* Patrick K. Perrin, Note, *Fourth Amendment Protection in the School Environment: The Colorado Supreme Court's Application of the Reasonable Suspicion Standard in* State v. P.E.A., 61 U. COLO. L. REV. 152 (1990).

police so as criminal evidence can be obtained, the probable cause standard must exist. In other words, administrators can not hand police evidence on a "silver platter."[14]

On the other hand, many school searches produce illegal contraband. What should school officials do with illegal drugs or guns? Certainly schools do not want to create a warehouse for drugs. School officials should turn over the contraband to the police at a point where it is convenient. If the police decide they wish to make a criminal case out of the illegal contraband, that is their choice. The school's business is to punish the student under the school rules in order to provide a safe environment. It is not the school's job to act as agents of police to see to it that students are prosecuted criminally.

Figure 3

Police Involvement Variables

Presence of several of these will make it more likely that the probable cause standard will control	If these variables predominate, then the reasonableness standard is more likely to control
Police & Probable Cause	**School Official & Reasonableness**
1. Police request to be present	1. School makes the request for police presence
2. Police gather the facts	2. School officials are the fact-finders
3. Police make the decision to search	3. School decides that a search is to be conducted
4. Police direct the search activities	4. School directs the what, who and how of the search
5. Police actually do searching	5. School officials perform the search
6. Criminal prosecution is contemplated	6. Only a school disciplinary proceeding is contemplated

[14] *Id.* at 385.

At the outset, a decision of school officials to call the police can be crucial. The call for help can be a "wolf in sheep's clothing." Calling the police too soon or letting them take over once they arrive can actually make the situation more difficult for the school. A school official's opportunity to discipline the student might be lost if the higher probable cause standard is required because of police involvement.

1. Variations of Police Involvement

School officials might consider taking care of the school disciplinary side of the case *before* calling in police. In other words, gather the facts, make the decision to search based on a reasonable suspicion, conduct the search within reasonable scope, obtain the evidence, decide what school disciplinary procedure is to be used, then call the police. At this point, the evidence can be turned over to the police. If the police decided to prosecute criminally, it is something beyond the disciplinary action. In this way, police involvement will not contaminate the process while the search was being conducted, which would have involved the higher standard of probable cause.

Another alternative is to call in police for "consultation." Police could "stand by" while school officials conduct the search. This approach might give the school a greater sense of security if anything were to go wrong. However, school authorities must not be tempted to involve the police too heavily in their searches. A rule of thumb here is that if school authorities conduct a search *at the behest* of the police, they will need to use the probable cause standard. On the other hand, there are cases which indicate that school officials may, under narrowly tailored circumstances, conduct searches *in conjunction with* the police and the reasonable suspicion standard will hold.

In *Cason v. Cook*,[146] a police officer assigned to the school as a part of a cooperative program between the school and the police assisted with the search of two students for a missing change purse. The search was conducted by the school official who found the missing item and was followed up by a pat down from the police officer. The Eighth Circuit Court of Appeals upheld the search, noting that the officer's involvement was minimal and that the search was not at the behest of the police.

Police may also be involved in school searches when there is an emergency situation. For example, the school official may be tipped to the presence of a loaded gun or a bomb. When school personnel,

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[146] 810 F.2d 188 (8th Cir. 1987), *cert. denied*, 482 U.S. 930 (1987).

students, or property are in immediate danger, school officials should not be concerned with the intricacies of search and seizure standards. Not withstanding this fact, it is likely that the situation would fall under the "emergency" exception to the probable cause requirement as discussed previously. In addition, police have not needed probable cause to conduct canine searches of lockers or desks. As mentioned previously, these actions when applied to inanimate objects do not constitute a search and therefore do not fall within Fourth Amendment protections.[147] Similarly, there seem to be exceptions to the probable cause standard when the searches are administrative in nature such as metal detector searches.[148]

When elaborating on the reasonable suspicion test of the reasonableness standard, the majority in *T.L.O.* ruled that a search by school officials would be justified at its inception when there are reasonable grounds for suspicion that the search will turn up evidence that the student has violated or is *violating either the law* or the rules of the school."[149] One commentator has suggested that a school official can seek evidence with criminal prosecution in mind but need not be bound by the probable cause requirement, as are police.[150] If this provision permits the "silver platter doctrine" whereby school officials act as surrogates for the police, such actions would not likely be upheld.[151]

2. Security Guards

A number of schools throughout the country employ security guards to assist with school safety and discipline. Are security guards school officials or police? What standard applies for them — probable cause or reasonableness? The only case to directly deal with this question in now several decades old. In *People v. Bowers*,[152] a school security guard conducted a pocket search of a student who had a suspicious bulge. The court invalidated the search since it could not be shown that the security guard had probable cause. The court said that the higher standard applied because the guard was a peace officer

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[147] *See, e.g.*, Horton v. Goose Creek Indep. Sch. Dist., 690 F.2d 470, 477 (5th Cir. 1982), *cert. denied*, 463 U.S. 1207 (1983).

[148] *See* People v. Dukes, 580 N.Y.S.2d 850 (N.Y. Crim. Ct. 1992).

[149] *T.L.O.*, 469 U.S. at 342 (emphasis added). The "justified at its inception" requirement comes from the case, Terry v. Ohio, 392 U.S. 1 (1967) and is the first prong of the two prong test for reasonableness set forth in *New Jersey v. T.L.O.*

[150] *See* J. Stupe & D. Dunaway, *Search and Seizure in the Public School: The Supreme Court Finally Speaks!*, 22 EDUC. L. REP. 20 (1985).

[151] In 1960, the Supreme Court invalidated the silver platter doctrine under other circumstances. *See* Elkins v. United States, 364 U.S. 206 (1960).

[152] 356 N.Y.S.2d 432 (N.Y. App. Div. 1974).

serving no educational function. "[U]nlike a faculty member of a school who can search a student on the grounds of reasonable suspicion, a security officer, *acting without direction of the school authorities*, must premise such a search upon probable cause."[153] The court reasoned that the security guard's purpose in being at school is different from that of the school official:

> [A] member of the faculty views his role in disciplining a student in a different context than that of a security officer. The faculty member will use his experience, education, and unique relationship with the student to discipline him in such a manner as will best benefit the individual and school in general. A security officer, however, is employed for the purpose of maintaining school safety, handling disturbances and acts of crime.[154]

Whether the security guard actually looks like a peace officer or is in plain clothes seems to have no bearing on the matter. The *Bowers* court noted that in a case of a municipal hospital security guard, "he did not wear a uniform nor possess a badge, [but] was still required to act only on probable cause."[155] As with police, however, there are times when security guards need only reasonable suspicion to search, namely when they are performing their duties at the behest of school officials.

Recent cases involving security guard searches have side-stepped the question of whether the standard of probable cause or reasonable suspicion applies. A California court provides an example. *In re Fredrick B.*, the student challenged his search by a school security guard claiming that the guard did not have probable cause. The court declined to answer the question of whether probable cause applied by noting that the security guard "detained" the student first. After the detention the student attempted to flee whereupon a gun dropped from the student's pocket. The gun being exposed provided probable cause for the subsequent search. The only question then is did the guard have to have probable cause to detain the student in the first place. The court said that in the first instance: "Bartlett was conducting a detention, not a search. It has been established that detentions may be conducted by peace officers if supported by reasonable suspi-

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[153] *Id.* at 435 (emphasis added)
[154] *Id.* at 435-36
[155] *Id.* at 435

cion and that Bartlett satisfied this test."[156] When the guard first approached the student he had been seen exchanging money with another student. When the student saw the guard he became very nervous. When the guard started asking questions, the student fled.

In a recent Florida case, the court held that a school security guard was not a law enforcement officer and was not acting at the behest of police when he obtained a gun after it was exposed upon detention. The guard was acting on an anonymous tip. Once again, the guard did have reasonable suspicion. Reasonable suspicion was all that was needed for the detention whether he was considered police or school employee.[157]

The issue of whether the probable cause standard applies to security guards can be avoided if the guards' activities are limited to detention. Only reasonable suspicion is needed for a detention. However, in the process of questioning a student, a student may behave in such a way that probable cause is created. Likewise after questioning, the guard can always take the student to the office where a school official, who only needs reasonable suspicion, can conduct the search.[158]

C. Common Errors

1. Consent

Consent is one of the exceptions to the requirements in search and seizure law. If a person to be searched gives consent then that person has fewer rights under the Fourth Amendment. Can students give consent to be searched? The answer may not be so obvious. One commentator has pointed out that the conditions for consent in a school setting are narrow.[159]

Over the years there have been few cases dealing with the consent issue in school searches. In fact the leading case where student consent was crucial was *Jones v. Latexo Independent School District*[160] decided in 1980. The facts were typical to search and seizure situations in school. A sniff dog was brought in to assist in a search for drugs. The dog identified several student vehicles for possible presence of contra-

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[156] 237 Cal. Rptr. 3d 338, 344 (1987).
[157] S.D. v. State, 650 So. 2d 198 (Fla. Dist. Ct. App. 1995).
[158] *See, In re* William G, *infra* and *In re* Robert B.
[159] *See* Trosch, *supra* note 25.
[160] 499 F. Supp. 223 (E.D. Tex. 1980).

band. Upon a detailed inspection of the cars, drug paraphernalia was found. Six students were suspended. The school authorities argued that they had asked students if they would agree to be searched and therefore Fourth Amendment restrictions did not apply — students had given their consent. The court rejected the argument and reasoned that students in school are afraid not to cooperate with school authorities. Therefore, consent was not freely given.

> The targets of the search were children with limited experience in a threatening situation. Insubordination is a disciplinary offense under school rules. Accustomed to receiving orders and obeying instructions from school officials, they were incapable of exercising unconstrained free will when asked to empty their pockets and open their vehicles to be searched. Moreover plaintiffs were told repeatedly that if they refused to cooperate with the search, their mother would be called and a warrant procured from the police if necessary. These threats aggravated the coercive atmosphere in which the searches were conducted.[161]

Given the facts in this case, it is difficult to envision when a student could ever be considered to have given consent to a search. School officials would be on precarious grounds if they relied on the consent exception in conducting their searches.

The only other case on point is provided by an Alaska court. In *Shamberg v. State*, an assistant principal was informed by a teacher that a student was in the library under the influence of alcohol. After being pointed out, the student was questioned. It appeared from the student's behavior that he was drunk. Believing the student had gotten drunk at lunch time while away from campus, the assistant principal asked the student for the keys to his car for a search. The student refused. After some period of additional questioning the assistant principal handed the student a "consent form" and was told to sign it. Again after some period of discussion, the student signed the form. While the court did uphold the legality of the search, it was not based on the presence of consent. The court noted that the student had not given his consent freely and voluntarily. Nevertheless, the court held that reasonable suspicion was present based on the student's behavior leading up to the search.[162]

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[161] *Id.* at 237.

[162] Shamberg v. State, 762 P.2d 488, 490 (Alaska Ct. App. 1988).

2. Using the Wrong Standard

By now the reader will have discovered that there are several standards which might operate in the school setting for search and seizure. The practitioner should know which standard will control in which set of circumstances. Without this knowledge, school officials may fall short of meeting a higher standard or waste time gathering information to a degree of sufficiency that is not necessary. There are three standards which might operate: First, the reasonableness standard, second, the probable cause standard and, third, the administrative search doctrine.

The reasonableness standard as announced in *T.L.O* will control in most cases of personal searching in the public school. It is the standard which the Supreme Court felt most appropriate for the school setting. Types of personal searches include: emptying pockets/purses or bags, pat downs, reaching into pockets/purses or bags, sniff dogs, and strip searches. The closer the searcher comes to the body the higher the extent to which reasonable suspicion should be present. It should be theoretically possible to have enough suspicion and factors present to warrant a highly intrusive strip search. As a matter of practice, few courts have been willing to accept the strip search.

If searching inanimate objects such as lockers, desks, bags or luggage, or if using metal detectors, school officials may use the reasonableness standard or may apply the administrative search doctrine. Administrative searches are employed when groups of persons need to be searched and any member of that group could be the agent who might cause a dangerous event to take place. Under the administrative search doctrine, searches are reasonable if the intrusion that the search entails is "no greater than necessary to satisfy the governmental interest underlying the need for the search."[163]

To determine this, the Supreme Court has employed a balancing test which weighs the degree of intrusion against the severity of danger imposed.[164] In other words, if there is considerable danger and the search is relatively unintrusive (such as searches of inanimate objects), then the search would be legal without a warrant, probable cause, or individualized suspicion. The Supreme Court has never applied this doctrine to a school search case, but the *Dukes*[165] court in New York did use this doctrine to uphold a school metal detector search in reac-

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[163] Michigan State Police v. Sitz, 496 U.S. 444, 449-53 (1990).
[164] *Id.*
[165] *See* note 115.

tion to a concern for weapons in the school. (This case is mentioned earlier in the monograph.)

The *T.L.O.* Court did not announce exactly what the standards are for the search of inanimate objects. However, some form of the reasonableness standard, if followed, would satisfy the court. The search of an inanimate object is a step away from the body. The scope of intrusion is far less or even nonexistent. Therefore, the degree of reasonable suspicion that must be present before initiating a search is less than for a personal search. A school official must be careful not to confuse an inanimate search for what really is a personal search. If a student is wearing a purse/bag before or during the search of it, this would be considered a personal search. Likewise, if a student is in the car at the time of a vehicle search, this might be more of a personal search than that of an inanimate object (car).

Figure 4

Matching Searches with Standards

Type of search:	Standard to be met:
Personal: i.e. pockets, bags or purse being worn	Reasonableness standard
Inanimate Object: i.e. locker, desk, car or pocket, bag, purse not being worn	A reasonableness standard or may not require standard if officials have reduced the expectation of privacy
Random suspicionless (metal detector to enter school or drug testing)	Administrative search doctrine
Police or security guard search	Probable cause and/or warrant

Once again, school authorities should be aware that police involvement in a search might trigger the need for a probable cause standard. The opportunity for the school to discipline the student may be set aside in deference to the criminal prosecution target of the police. If the police are in charge of a search and later a court finds the search illegal, it is doubtful that the school then could take over and

punish the student. In hindsight, it might have been wiser for school authorities to have proceeded without major police involvement, thus making it more probable that the student be punished in some way as opposed to being released. Figure 4 summarizes the relationship among search and seizure standards and the type of search used.

3. State or Local Standards?

Meeting the appropriate standard as set by *T.L.O.* or lower courts may not be enough. Practitioners first must check whether their state has search requirements that go beyond federal law. The majority opinion in *T.L.O.* concluded that states could have higher standards for searches under their own constitutions and statutes.[166] Indeed, Louisiana requires that school officials obtain a warrant before conducting a search. The *T.L.O.* decision did not disturb this Louisiana ruling.[167] Several states had required similar "reasonableness standards" prior to *T.L.O.* In California, Delaware, Florida, Illinois, Indiana, Michigan, New Mexico, Ohio, Oklahoma, Oregon, Washington and Wisconsin, no significant change occurred because of *T.L.O.*[168] School officials practicing in these states must follow the state requirement first. If the state law is silent in any specific procedural aspect, then the federal requirements would take effect. Oklahoma is an example of a state that has left little to the discretion of the local school authorities when searching students. Perhaps the most extensive of state statutes, Oklahoma provides over fifty lines of statutory language to guide the searching of students.[169]

Some school districts may have board policy governing search and seizure. These policies can require that school officials use procedures even more protective of students' rights than established in federal or state law. This follows the general proposition that a lower governmental unit can always volunteer to provide greater protection for its citizens than that required of the higher governmental unit. Therefore, school officials should look upon the *T.L.O.* standards as being minimal.

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[166] *T.L.O.*, 469 U.S. at 343 n.10.

[167] *See* State v. Mora, 330 So. 2d 900 (La. 1976), *cert. denied*, 429 U.S. 1004 (1976).

[168] D. Franklin, *Search and Seizure in Public Schools — The Supreme Court's Impact on School Security*, 58 Am. Sch. & U. 4-5 (1985).

[169] Okla. Stat. tit. 70, §§ 24-102.

4. Dragnet Searches

Earlier, the subject of individualized suspicion was discussed. To an extent, it is necessary for a searcher to know which students specifically are carrying contraband. Searching an entire group of students is rarely permitted. Searching an entire section of lockers or a row of unoccupied cars can be permitted. A school official must remember that generally a dragnet search can only be conducted with inanimate objects. The major exception being searches with metal detectors as a condition of entry into the school building and where the school can show a compelling need for the procedure. Compelling need is likely to require that the school show an immediate, acute and exigent danger to the safety of the student body (i.e. recent shootings, drug infestation).

5. Field Trip Searches

What standard will apply to school officials and students who are away from the building on a field trip? The question arose as part of a legal challenge a high school student made when her hotel room was searched by the principal during a band trip to Hawaii. In *Webb v. McCullough*,[170] the principal was informed by a hotel clerk and some adult chaperons that several female students had alcohol in their room. The principal obtained a key to the room and entered without warning to find the girls in their underwear. He temporarily left the room to have them dress. Upon his return, he found one of the girls (plaintiff in the case) had locked herself in the bathroom. The principal broke down the door, knocking the girl against the wall in the process. Upon entering the room the principal slapped the girl and threw her against the wall. No alcohol was ever found in that hotel room. All four girls were sent home on the next airplane.

The United States Circuit Court of Appeals for the Sixth Circuit upheld the search of the hotel room. While the court did not find that the principal had met the reasonableness standard, it held that the *T.L.O.* standard did not apply when away from the school building. "Although McCullough was a state actor at all times during the trip, the events which led to this suit did not occur in school. The *T.L.O.* court found that school officials' need to search is based on their interest in maintaining discipline in the classroom and on school grounds."[171]

The court went on to recognize that the in loco parentis (in place of parents) standard for defining the legal relationship of teachers

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[170] 828 F.2d 1151 (6th Cir. 1987).
[171] *Id.* at 1155 (citing T.L.O. 105 S. Ct. at 742-43).

and students was replaced. Indeed, the *T.L.O.* court went a long way in defining the relationship as one of government agent and citizen. However, in certain circumstances the in loco parentis doctrine is still vital. A field trip is one of those circumstances:

> The trip to Hawaii was an appropriate circumstance for the operation of in loco parentis. The principal was acting as both a representative of the state and in loco parentis in his task of searching Webb's room... The crucial factual difference between the in-school search in *T.L.O.* and the search during a field trip in this case permits, indeed requires, the application of the in loco parentis doctrine.[172]

V. Searches for Drugs and Drug Testing

Cracking down on drug use in schools has been a major theme supported by authorities as prominent as the President of the United States. However, in an effort to eradicate an evil, school authorities may be infringing on students' constitutional rights. While some heralded *T.L.O.* as a big victory for school authorities, practitioners should not assume that application of the reasonableness standard will always produce success for school authorities. As one commentator observed about the post-*T.L.O.* cases: "It does not appear that the courts when applying the reasonable suspicion standard, have favored the schools' legitimate need to maintain order and safety over students' legitimate expectations of privacy. ... [T]he courts have upheld the searches in some instances and found them unreasonable in others."[173]

A. Searching Students for Possession of Drugs

Cales v. Howell Public Schools[174] is a good example of how the courts may apply the reasonableness standard when it comes to searching for drugs. The *Cales* case provides an interesting caveat in applying the reasonableness standard. Ruth Cales was a fifteen-year-old high school sophomore in Howell, Michigan. During class time,

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[172] *Id.* at 1156.

[173] E. Mondschein & M. Martin, *Search and Seizure in the Public Schools: The Aftermath of T.L.O.*, NOLPE SCH. L. UPDATE 1987 (T. Jones & D. Semler, eds., 1987).

[174] 635 F. Supp. 454 (E.D. Mich. 1985).

the student was observed by a security guard hiding behind a car in the school parking lot. She gave a false name when confronted by the guard. She was guided to the assistant principal's office where she was ordered to empty her purse. The purse contained "readmittance slips" which students were not allowed to have in their possession. The assistant principal then requested another assistant principal (a woman) and a secretary (also a woman) to conduct an additional search for drugs.

While in the presence of the two female searchers, Cales was instructed to turn her pants' pockets inside out. She then removed her pants completely although not requested to do so. Cales was ordered to bend over so her bra could be looked into. At no time during any of the searching was the student's body touched. Cales sued the school district alleging that the school administration had no reasonable suspicion to search her for drugs. In deciding for the student, the court held that the school's suspicion was not reasonably related to the object of the search. Cales' observed behavior could have indicated that she was violating any number of school rules other than a drug violation. In the court's words:

> It is clear that plaintiff's conduct created reasonable grounds for suspecting that some school rule or law had been violated. However, it does not create a reasonable suspicion that a search would turn up evidence of drug usage. Plaintiff's conduct was clearly ambiguous. It could have indicated that she was truant, or that she was stealing hubcaps, or that she had left class to meet a boyfriend. In short, it could have signified that plaintiff had violated any of an infinite number of laws or school rules. This court does not read *T.L.O.* so broadly as to allow a school administrator the right to search a student because that student acts in such a way as to create a reasonable suspicion that the student has violated *some* rule or law.[175]

Thus, the practitioner should be able to relate observed behavior of a student specifically to the object of the search. In order for a school to prevail, it would, at the very least, have to insist upon some "evidence" to support the notion that the student possessed drugs. In some recent cases involving very intrusive searches for drugs, the

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[175] *Id.* at 455.

courts have upheld the searches because there was a "totality of circumstances" which linked the student to the suspected offense.[176]

B. Drug Testing of Students

The Supreme Court has noted that a drug test is a search (of body fluids) under the Fourth Amendment.[177] Therefore, the reasonableness standard must apply to these searches. Thus, school officials who choose to have students tested for drugs must follow guidelines commensurate with the *T.L.O.* decision. As with other searches, the drug test must be justified at its inception and reasonable in scope, duration, and intensity. School officials who ignore these standards may well find themselves conducting an illegal search.

1. Drug Testing of Individual Students

Anable v. Ford[178] presents a good example of issues related to the drug testing of students when individualized suspicion is present. In this Arkansas case, there was a heavy odor of marijuana in a high school restroom and a cheerleader noticed that either Balch or her friend was holding a marijuana cigarette and then flushed the toilet. Other students entering the restroom also reported smelling marijuana. The cheerleader, Balch, and her friend were all interviewed separately. The cheerleader was afraid to accuse the other students, so all three females were subjected to a drug test. As part of the procedure, they were required to urinate in the presence of a female staff member to assure that the sample was genuine. Balch's test proved positive and she was expelled from school in compliance with the school's drug testing policy. Balch filed suit claiming that her Fourth and Fourteenth (due process) Amendment rights had been violated. Anable, a male student who under other circumstances had to submit to drug testing in the same school also filed suit.

A federal district court ruled that Balch's search was unreasonable but upheld the expulsion because there was reason enough to expel Balch even without the drug test. The court awarded Balch damages because of the way the search was conducted and also questioned the reliability of the test itself.

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[176] *See* Williams & Cornfield, *supra* notes 77-82 and accompanying text.
[177] Skinner v. Railway Labor Executives' Ass'n, 489 U.S. 602 (1989).
[178] 663 F. Supp. 149 (W.D. Ark. 1985).

2. Drug Testing of Groups of Students

Since *T.L.O.*, there have been several decisions involving drug testing of groups of students. At least one of these cases involved drug testing of all students while others separated out certain groups of students to be tested such as those students participating in extracurricular activities or student athletes.

a. Drug Testing of All Students

In *Odenheim v. Carlstadt-East Rutherford Regional School District*,[179] a New Jersey school board adopted a policy called "Comprehensive Medical Examination." Each student was to be examined to determine whether students suffered from "any physical defects, illnesses, or communicable diseases." Part of the examination included a urine sample which was analyzed for drugs including alcohol. Students sued the school district arguing that the urine testing was a general search of their bodies for which school authorities had no particularized suspicion. Deciding for the students, the court reasoned: "Assuming arguendo, that this is strictly and solely a medical examination to inquire into a medical condition, a position which this court does not accept, I would still find that the activities [of the school officials] violate the reasonable privacy expectation of school children."[180]

It remains to be seen whether the *Odenheim* requirements for reasonable suspicion in student drug testing hold up under other circumstances. For example, the *Odenheim* decision appears to imply that had there been a history of drug problems in the school district, the court might have ruled otherwise.[181]

In addition to *Odenheim*, there have been several other drug testing cases in public schools. Some of these, which have involved drug testing of teachers, ended with holdings similar to *Odenheim*.[182] There have also been cases where certain groups of students have been singled out for drug testing. These are discussed below.

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[179] 510 A.2d 709 (N.J. Super. Ct. Ch. Div. 1985).

[180] *Id.* at 713.

[181] The court took time to note that the raw number and percentages of students referred to drug counseling as compared to the total student body did not justify urinalysis. *Id.*

[182] *See* Jones v. McKenzie, 628 F. Supp. 1500 (D.D.C. 1986) (holding that the urinalysis of a school bus attendant without particularized suspicion violated the Fourth Amendment); Patchogue-Medford Congress of Teachers v. Board of Educ. of Patchogue-Medford Union Free Sch. Dist., 505 N.Y.S.2d 888 (N.Y. App. Div. 1986) (requiring particularized suspicion before urinalysis of teachers).

b. Drug Testing of Student Athletes

In *Brooks v. East Chambers Consolidated Independent School District*,[183] a Texas school district instituted a policy which required drug testing of any students involved in extracurricular activities. This school had no serious drug problems, but instead had instituted the policy in response to a general societal concern for drugs in schools. A federal district court ruled that this policy was unconstitutional in that there was no compelling need for the search and that the search was unlikely to accomplish its objectives.[184]

Other drug testing programs have been aimed solely at student athletes. In *Schaill v. Tippecanoe*,[185] a Seventh Circuit Court ruled that random urine testing of student athletes was a reasonable search because of the school's interest in preventing drug-related injuries, because student athletes are role models for other students, and because the intrusion into privacy is lessened in view of other physical examinations required of student athletes. A Ninth Circuit Court ruled differently on the student drug testing issue in *Acton v. Vernonia School District*,[186] stating explicitly that it disagreed with the Seventh Circuit's decision.[187]

In 1995, the United States Supreme Court heard the *Acton* case and issued its opinion. This decision was especially important because it was only the second time that the high court had ever ruled on a public school search and seizure case, the first being *New Jersey v. T.L.O.*

The *Acton* case involved James Acton, a seventh-grade student who was required to sign a drug testing consent form in order to participate in interscholastic athletics. Because James and his parents refused to sign the form, James was suspended from this athletic program. There had never been any evidence that James had used drugs or that the school system suspected him of drug use. The consent form was part of a drug testing policy that the school had instituted after a rise in drug problems and drug-related sports' accidents in the district. In rendering its decision, the United States Supreme Court maintained that 1) student athletes have a low expectation of privacy; 2) the scope of the search was relatively unobtrusive given the sensitive procedures employed; and 3) the program served an important

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[183] 730 F. Supp. 759 (S.D. Tex. 1989).
[184] *Id.* at 765.
[185] 864 F.2d 1309 (7th Cir. 1989).
[186] 23 F.3d 1514 (9th Cir. 1994).
[187] *Id.*

governmental interest — fighting a school drug problem.[188]

With regard to the low expectation of privacy, the Court noted that while students may have privacy rights, they are children who are subjects of the state while in school. While *T.L.O.* held that the relationship between pupil and teacher is more than the delegated power of parents (in loco parentis), it "did not deny, but indeed emphasized, that the nature of that power is custodial and tutelary, permitting a degree of supervision and control that could not be exercised over free adults."[189] As students, they are routinely required to submit to various physical examinations and be vaccinated. Therefore, students within the school environment have less expectation for privacy than members of the population generally.

The legitimate expectation for privacy is even less for student athletes. The Court noted:

> School sports are not for the bashful. They require "suiting up" before each practice or event, and showering and changing afterwards. Public school locker rooms, the usual sites for these activities, are not notable for the privacy they afford. The locker rooms at Vernonia are typical: no individual dressing rooms are provided; shower heads are lined up along a wall, unseparated by any sort of partition or curtain; not even all the toilet stalls have doors.[190]

In addition the majority pointed out that students who go out for sports have a reduced expectation of privacy because of the voluntariness of the activity. Students know when they try out for the team, they will ultimately subject themselves to higher regulation than other students.

Therefore, the Court classified the student athletes expectation of privacy as low. The Court then turned to the question of scope. What is the character of the intrusion that urinalysis imposes? The answer depends on the "manner" in which the urine sample is monitored. In looking at the great care with which the school program

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[188] Vernonia School District v. Acton, No. 94-590, 1995 WL 373274 (S. Ct. June 26, 1995); *see also* Lawrence F. Rossow & Jacqueline A. Stefkovich, Vernonia School District v. Acton: Drug Testing of Public School Student Athletes Is Permitted (July 31, 1995) (unpublished manuscript, on file with Lawrence F. Rossow, University of Oklahoma, Norman, Oklahoma).

[189] *Id.* at 6.

[190] *Id.* at 7.

was implemented, the Court concluded that "Under such conditions, the privacy interests compromised by the process of obtaining the urine sample are in our view negligible."[191]

The Court then turned to the school side of the balancing test. It noted that the lower courts erred in reading *Skinner* and *Von Raab* to require that the government show a "compelling interest" before it can engage in a suspicionless search. In those cases, the government interest did rise to the level of compelling simply because of the nature of the events — but not that it had to. In the Court's words:

> It is a mistake, however, to think that the phrase "compelling state interest," in the Fourth Amendment context, describes a fixed, minimum quantum of governmental concern, so that one can dispose of a case by answering in isolation the question: Is there a compelling state interest here? Rather, the phrase describes an interest which appears important enough to justify the particular search at hand, in light of other factors which show the search to be relatively intrusive upon a genuine expectation of privacy.[192]

Whether the high degree of concern is necessary in this case or not the Court thought it was nevertheless met. It went on to note that the "importance" of the government's concern for the nation's schoolchildren is at least as important as enhancing efficient enforcement of the nation's laws against the importation of drugs (*Von Raab*) or deterring drug use by trainmen (*Skinner*).

At this point the majority seems to blur what is "important" and what is "compelling" for Fourth Amendment analysis. The court seems to define "compelling" as governmental interests that are so "important" they outweigh individual privacy rights. This would be especially true if the privacy interests are attached to what society might consider only low expectation.

The Court did go a bit further with its analysis of the government's interest. It noted that to set aside the individualized suspicion requirement, as it did in *Skinner* and *Von Raab*, the government must have an "immediate" concern. In the Court's view, the description of the problem in *Vernonia* "[I]s an immediate crisis of greater proportions than existed in *Skinner*."

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[191] *Id.*
[192] *Id.* at 9.

As to the efficacy of addressing the problem with the program as practiced by the school district, the Court gave high marks. On this point, the dissent was particularly critical of the policy for not using a less intrusive means of dealing with the problem. In other words, the school could have dealt with the problem by engaging in accurate accusatory searches based on reasonable individualized suspicion. The majority responded by noting that "We have repeatedly refused to declare that only the 'least intrusive' search practicable can be reasonable under the Fourth Amendment ... In many respects, we think testing based on 'suspicion' of drug use would not be better, but worse."[193]

In a concise closing, the Court summed the opinion:

> Taking into account all the factors we have considered above — the decreased expectation of privacy, the relative unobtrusiveness of the search, and the severity of the need met by the search — we conclude Vernonia's Policy is reasonable and hence constitutional.[194]

The Court seems to have left open the question whether such a condition might exist which would permit schools to drug test an entire student body. Opinions taken immediately after the decision seem to run both ways.[195]

VI. Summary

At the onset of this monograph, several important questions were posed regarding search and seizure law. The following will provide a brief answer to those questions.

Question 1: Does the *exclusionary rule* apply to the fruits of an unlawful search in the public school?

Answer: Yes and no. If the evidence is going to be used to prosecute criminally, the exclusionary rule applies. If the evidence is to be used for punishing the student under school rules the exclusionary rule does not apply.

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[193] *Id.* at 10.
[194] *Id.* at 11.
[195] *See* note 1.

Question 2: Do students have privacy rights in connection with their lockers, desks or other storage areas?

Answer: Yes. Students have some privacy rights but those rights are very limited. School authorities should have some reasonable suspicion before searching an individual student's locker. A general "dragnet" style locker search could be conducted without individualized suspicion if the school makes a practice of conducting routine locker searches and makes it known to students that the school intends to utilize such a practice.

Question 3: Is it necessary to have individualized suspicion before searching?

Answer: Yes and no. If the search is "personal" (i.e., pockets purses or backpacks) individualized suspicion is generally required. If the search focuses on a storage area and is part of a routine check of many storage areas individualized suspicion is not required.

Overall the practitioner must keep a number of variables in mind when applying the reasonableness standard to a search and seizure situation. The **TIPS** formula will help keep the variables clear. First, there must be reasonable suspicion that the search will turn up evidence. To meet the suspicion test the searcher should remember **TI** of the **TIPS** formula. **"T"** stands for thing. What thing (kind of contraband) are you searching for? The more dangerous the thing for which you are searching the less suspicion is required. Next, the searcher should remember **"I."** **"I"** stands for *information*. What information does the searcher have that the contraband actually exists? Who gave that information to the searcher? Does it come from a reliable source? If the searcher has a good information base, it will help in meeting the suspicion test.

After the suspicion test is met, the searcher must meet the scope test. To meet reasonable scope, the searcher should remember **PS** of the **TIPS** formula. **"P"** stands for *place or person*. Whether the searcher is searching a person or an object (place) will dictate the extent to which the expectation of privacy can be intruded upon. The more personal the search, the more serious reasons the school should have for conducting the search. A highly intrusive search should not be conducted on a student's person if there is only a minor violation at stake. **"S"** stands for *search methods*. A searcher can conduct a search by asking the student to empty a pocket all the way to taking off his or her clothes. The methods used in the personal search should be no more intrusive than need be in order to get the evidence. The

searcher must keep in mind the age and sex of the student when deciding on a search method. The younger the student, the less flexibility the searcher has in using a highly intrusive method such as a sniffing dog. Also, when possible, the sex of the searcher should be the same as the student.

VII. Conclusions and Recommendations

Justice White, in writing for the majority in *T.L.O.* commented on the effect of the reasonableness standard: "the standard ... will save teachers and school administrators the necessity of schooling themselves in the niceties of probable cause and permit them to regulate their conduct according to the dictates of reason and common sense."[196] The court expressed the opinion that school officials should use their judgment as educators in dealing with search and seizure. However, as in most issues facing a modern society, some familiarity with law is necessary. The information in this monograph can serve to orient a school practitioner in search and seizure law and should be carefully read. At the same time, this monograph is not an instruction booklet that can be followed in a technical sense. This monograph must be teamed with "reason and common sense." By doing this, school authorities will have the best chance of avoiding the pitfalls in providing students with their constitutional rights.

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[196] 469 U.S. at 342-43 (emphasis added).

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